ELLIS : LAWHORNE

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May 11, 2005

VIA ELECTRONIC MAIL AND HAND-DELIVERY
The Honorable Charles L.A. Terreni
Executive Director
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: Joint Petition for Arbitration of NewSouth Communications, Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius [Affiliates] of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended
Docket No. 2005-57-C, Our File No. 803-10208

Dear Mr. Terreni:

Enclosed is the original and twenty-five (25) copies of the **Direct Testimony of Joint Petitioners** for filing on behalf of NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius [Affiliates] in the above-referenced matter. By copy of this letter, I am serving all parties of record in this proceeding and enclose my certificate of service to that effect.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it via the bearer of these documents.

If you have any questions or need additional information, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,

John J. Pringle, Jr.

JJP/cr
cc: Office of Regulatory Staff
all parties of record
Enclosures
F:\APPS\OFFICE\WPWIN\WPDOCS\KMC_NewSouth_Nuvox_Xspedius\Duke.Petition.wpd

BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION

IN RE:

JOINT PETITION FOR ARBITRATION OF NEWSOUTH COMMUNICATIONS CORP., KMC TELECOM V, INC., KMC TELECOM III LLC, AND XSPEDIUS COMMUNICATIONS, LLC ON BEHALF OF ITS OPERATING SUBSIDIARIES XSPEDIUS MANAGEMENT CO. SWITCHED SERVICES, LLC, XSPEDIUS MANAGEMENT CO. OF CHARLESTON, LLC, XSPEDIUS MANAGEMENT CO. OF COLUMBIA, LLC, XSPEDIUS MANAGEMENT CO. OF GREENVILLE, LLC, AND XSPEDIUS MANAGEMENT CO. OF SPARTANBURG, LLC.	)	**Docket No. 2005-57-C**

DIRECT TESTIMONY
OF THE JOINT PETITIONERS

Marva Brown Johnson on behalf of KMC Telecom V, Inc. & KMC Telecom III LLC
James Mertz on behalf of KMC Telecom V, Inc. & KMC Telecom III LLC
Hamilton Russell on behalf of NuVox Communications, Inc and its operating entity, NewSouth Communications Corp.
Jerry Willis on behalf of NuVox Communications, Inc and its operating entity, NewSouth Communications Corp.
James Falvey on behalf of the Xspedius Companies

May 11, 2005

PRELIMINARY STATEMENTS

WITNESS INTRODUCTION AND BACKGROUND

KMC: Marva Brown Johnson

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is Marva Brown Johnson. I am Senior Regulatory Counsel for KMC Telecom Holdings, Inc., parent company of KMC Telecom V, Inc. and KMC III LLC. My business address is 1755 North Brown Road, Lawrenceville, Georgia 30043.

Q. PLEASE DESCRIBE YOUR POSITION AT KMC.

A. I manage the organization that is responsible for federal regulatory and legislative matters, state regulatory proceedings and complaints, interconnection agreements and local rights-of-way issues. I am also an officer of the company and I currently serve in the capacity of Assistant Secretary. I participated actively in the negotiation of the Agreement that is the subject of this arbitration.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I hold a Bachelors of Science in Business Administration (BSBA), with a concentration in Accounting, from Georgetown University; a Masters in Business Administration from Emory University's Goizuetta School of Business; and a Juris Doctor from Georgia State University. I am admitted to practice law in the State of Georgia. I have been employed by KMC since September 2000. I joined KMC as the Director of ILEC Compliance; I was later promoted to Vice President, Senior Counsel and this is the position that I hold today.

Prior to joining KMC as the Director of ILEC Compliance, I had over eight years of telecommunications-related experience in various areas including consulting, accounting, and marketing. From 1990 through 1993, I worked as an auditor for Arthur Andersen & Company. My assignments at Arthur Andersen spanned a wide range of industries, including telecommunications. In 1994 through 1995, I was an internal auditor for BellSouth. In that capacity, I conducted both financial and operations audits. The purpose of those audits was to ensure compliance with regulatory laws as well as internal business objectives and policies. From 1995 through September 2000, I served in various capacities in MCI Communications' product development and marketing organizations, including as Product Development – Project Manager, Manager - Local Services Product Development, and Acting Executive Manager for Product Integration. At MCI, I assisted in establishing the company's local product offering for business customers, oversaw the development and implementation of billing software initiatives, and helped integrate various regulatory requirements into MCI's products, business processes, and systems.

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. I have submitted testimony in proceedings before the following commissions: the Alabama Public Service Commission, the Georgia Public Service Commission,, the Florida Public Service Commission; the Kentucky Public Service Commission, the Louisiana Public Service Commission, the South Carolina Public Service Commission, North Carolina Utilities Commission, and the Tennessee Regulatory Authority.

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am sponsoring testimony on the following issues:[1]

General Terms and Conditions	2/G-2, 4/G-4, 5/G-5, 6/G-6, 7/G-7, 9/G-9, 12/G-12
Attachment 2: Unbundled Network Elements	26/2-8, 36/2-18, 37/2-19, 38/2-20, 51/2-33(B)&(C)
Attachment 3: Interconnection	65/3-6
Attachment 6: Ordering	86/6-3(B), 88/6-5,
Attachment 7: Billing	97/7-3, 100/7-6, 101/7-7, 102/7-8, 103/7-9, 104/7-10

In addition, I am prepared to sponsor testimony on issues 23/2-5, 108/S-1, 111/S-4, 113/S-6 and 114 S-7. Joint Petitioners and BellSouth have agreed that they will file a joint motion requesting that the Commission refer these issues to its generic change-of-law docket for resolution, the results of which will then transferred to this docket for appropriate incorporation into the interconnection agreements that result from this docket. If the Commission declines to grant the Joint Motion, Joint Petitioners request the right to supplement this filing with testimony on those issues. Joint

[1] The following issues have been settled: 1/G-1, 3/G-3, 8/G-8,10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 27/2-9, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 43/2-25, 44/2-26, 45/2-27, 46/2-28, 47/2-29, 48/2-30, 49/2-31, 50/2-32, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 57/2-39, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 63/3-4, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/ 4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 94/6-11, 95/7-1, 96/7-2, 98/7-4, 99/7-5, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

Petitioners and BellSouth also agree that issues 109/S-2, 110/S-3 and 112/S-5 are moot.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the Joint Petitioners' Position, as set forth with respect to each unresolved issue subsequently herein, and associated contract language on the issues indicated in the chart above.

KMC: James M. Mertz

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is James M. Mertz. I am Director of Government Affairs for KMC Telecom Holdings, Inc., parent company of KMC Telecom V, Inc. and KMC III LLC. My business address is 1755 North Brown Road, Lawrenceville, Georgia 30043.

Q. PLEASE DESCRIBE YOUR POSITION AT KMC.

A. I am part of the organization that is responsible for federal regulatory and legislative matters, state regulatory proceedings and complaints, interconnection agreements and local rights-of-way issues. I participate in public policy and industry forums that deal with telecommunications issues. I am responsible for and manage KMC's interstate and intrastate tariffs. I actively support KMC's intercarrier billing organization, marketing department and access cost management organization.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I hold a Bachelors of Science in Mathematics from the University of Georgia and a Masters in Business Administration in Finance from Georgia State University. My telecommunications career began in 1979 with AT&T Long Lines, in data processing, designing computer systems to maintain AT&T telecommunications network. I was employed by AT&T until August 2001. While at AT&T I held numerous management positions dealing with accounting, economic analysis, financial analysis, budgeting, training development, strategic planning, regulatory issues management, Local Exchange Company relations, legislative policy implementation and planning and executing AT&T's strategic business initiatives for intrastate telecommunications services. I joined KMC Telecom in October 2001 as the Director of Access Cost Management.

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. I have submitted testimony in proceedings before the following commissions: the Alabama Public Service Commission, the Florida Public Service Commission, the Georgia Public Service Commission, the Louisiana Public Service Commission, the Mississippi Public Service Commission, the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am prepared to adopt all testimony sponsored by my colleague, Ms. Marva Brown Johnson. In the event Ms. Johnson is unable to attend the hearing in this matter, then I am prepared to testify on the following issues:[2]

General Terms and Conditions	2/G-2, 4/G-4, 5/G-5, 6/G-6, 7/G-7, 9/G-9, 12/G-12
Attachment 2: Unbundled Network Elements	23/2-5, 26/2-8, 36/2-18, 37/2-19, 38/2-20, 51/2-33
Attachment 3: Interconnection	65/3-6
Attachment 6: Ordering	86/6-3(B), 88/6-5
Attachment 7: Billing	97/7-3, 100/7-6, 101/7-7, 102/7-8, 103/7-9, 104/7-10

In addition, I am prepared to adopt or sponsor testimony on issues 23/2-5, 108/S-1, 111/S-4, 113/S-6 and 114 S-7. Joint Petitioners and BellSouth have agreed that they will file a joint motion requesting that the Commission refer these issues to its generic change-of-law docket for resolution, the results of which will then transferred to this docket for appropriate incorporation into the interconnection agreements that result from this docket. If the Commission declines to grant the Joint Motion, Joint

[2] The following issues have been settled: 1/G-1, 3/G-3, 8/G-8,10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 27/2-9, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 43/2-25, 44/2-26, 45/2-27, 46/2-28, 47/2-29, 48/2-30, 49/2-31, 50/2-32, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 57/2-39, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 63/3-4, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/ 4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 94/6-11, 95/7-1, 96/7-2, 98/7-4, 99/7-5, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

Petitioners request the right to supplement this filing with testimony on those issues. Joint Petitioners and BellSouth also agree that issues 109/S-2, 110/S-3 and 112/S-5 are moot.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the CLEC Position, as set forth with respect to each unresolved issue subsequently herein, and associated contract language on the issues indicated in the chart above.

NuVox/NewSouth: Hamilton ("Bo") Russell

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is Hamilton E. Russell, III. I am employed by NuVox as Vice President, Regulatory and Legal Affairs. My business address is 301 North Main Street, Suite 5000, Greenville, SC 29601.

Q. PLEASE DESCRIBE YOUR POSITION AT NUVOX.

A. I am responsible for legal and regulatory issues related to or arising from NuVox's purchase of interconnection, network elements, collocation and other services from BellSouth. In addition, I was primarily responsible for negotiation of the NuVox-BellSouth Interconnection Agreement presently in effect. I participated actively in the negotiation of the Agreement that is the subject of this arbitration.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I received a B.A. degree in European History from Washington and Lee University in 1992 and a J.D. degree from the University of South Carolina School of Law in 1995. I have been employed by NuVox and its predecessors since February of 1998. From

July of 1995 until January of 1998 I was an associate with Haynsworth Marion McKay & Guerard, LLP. From August of 1993 until July of 1995 I worked for the Office of the Speaker of the South Carolina House of Representatives.

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. I have submitted testimony to the following commissions: the Alabama Public Service Commission, the Georgia Public Service Commission,, the Florida Public Service Commission; the Kentucky Public Service Commission, the Louisiana Public Service Commission, the South Carolina Public Service Commission, North Carolina Utilities Commission, and the Tennessee Regulatory Authority.

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am sponsoring testimony on the following issues:[3]

General Terms and Conditions	2/G-2, 4/G-4, 5/G-5, 6/G-6, 7/G-7, 9/G-9, 12/G-12
Attachment 2: Unbundled Network Elements	26/2-8, 36/2-18, 51/2-33
Attachment 3: Interconnection	None
Attachment 6: Ordering	86/6-3(B)

[3] The following issues have been settled: 1/G-1, 3/G-3, 8/G-8, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 27/2-9, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 43/2-25, 44/2-26, 45/2-27, 46/2-28, 47/2-29, 48/2-30, 49/2-31, 50/2-32, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 57/2-39, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 63/3-4, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/ 4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 94/6-11, 95/7-1, 96/7-2, 98/7-4, 99/7-5, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

Attachment 7: Billing	97/7-3, 100/7-6, 101/7-7, 102/7-8, 103/7-9, 104/7-10

In addition, I am prepared to sponsor testimony on issues 108/S-1, 111/S-4, 113/S-6 and 114 S-7. Joint Petitioners and BellSouth have agreed that they will file a joint motion requesting that the Commission refer these issues to its generic change-of-law docket for resolution, the results of which will then transferred to this docket for appropriate incorporation into the interconnection agreements that result from this docket. If the Commission declines to grant the Joint Motion, Joint Petitioners request the right to supplement this filing with testimony on those issues. Joint Petitioners and BellSouth also agree that issues 109/S-2, 110/S-3 and 112/S-5 are moot.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the Joint Petitioners' Position, as set forth with respect to each unresolved issue subsequently herein, and associated contract language on the issues indicated in the chart above.

NuVox/NewSouth: Jerry Willis

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is Jerry Willis. I was formerly the Executive Director — Network Cost and Budgeting for NuVox, from May 2000 until July 31, 2003. Since August 1, 2003, I have been retained as a consultant to NuVox. I can be reached care of NuVox witness Hamilton Russell at 2 North Main Street, Greenville, SC 29601.

Q. PLEASE DESCRIBE YOUR POSITION AT NUVOX.

A. While at NuVox I assisted in matters such as implementation of switches, collocations, engineering, power and other elements needed to build the company's telecommunications network. While I served as Executive Director – Network Cost and Budgeting, I directed company and vendor employees in equipment installation and testing of sixty-one collocations, completing all sites in three months for an average of one site completion per day. I participated in the negotiation of certain aspects of the Agreement that is the subject of this arbitration.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I have over thirty-five (35) years of experience in the telecommunications business and have worked with Competitive Local Exchange Carriers ("CLECs"), Incumbent Local Exchange Carriers ("ILECs"), Interexchange Carriers ("IXCs") and consulting firms.

I have held positions at several telecommunications companies. From 1997 to November of 1998 I was Director, Network Services for IXC Communications, an interexchange carrier located in Austin, Texas. From 1996 to January of 1997 I was the Director of Provisioning for McLeod USA. Prior to that I served as Director of International Business Development with Corporate Telemanagement Group, Inc. ("CTG") and was responsible for identifying and developing new business opportunities as well as recruiting and managing in-country agents. From October of 1986 until January of 1991, I was employed with Telecom USA as Network Director.

From 1970 until 1986 I was employed by Contel, an ILEC headquartered in St. Louis, MO. While with Contel I served in various capacities, including stints as Special Services Technician, Division Transmission Engineer, District Superintendent, Division Planning Engineer and Manager, Proposal and Contract Development. From 1965-1970 I was an engineer in the Bell system.

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS TO WHICH YOU HAVE SUBMITTED TESTIMONY.

A. I have submitted testimony to the following commissions: the Alabama Public Service Commission, the Georgia Public Service Commission,, the Florida Public Service Commission; the Kentucky Public Service Commission, the Louisiana Public Service Commission, the South Carolina Public Service Commission, North Carolina Utilities Commission, and the Tennessee Regulatory Authority.

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am sponsoring testimony on the following issues:[4]

General Terms and Conditions	None

[4] The following issues have been settled: 1/G-1, 3/G-3, 8/G-8, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 27/2-9, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 43/2-25, 44/2-26, 45/2-27, 46/2-28, 47/2-29, 48/2-30, 49/2-31, 50/2-32, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 57/2-39, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 63/3-4, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/ 4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 94/6-11, 95/7-1, 96/7-2, 98/7-4, 99/7-5, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

Attachment 2: Unbundled Network Elements	23/2-5, 37/2-19, 38/2-20
Attachment 3: Interconnection	65/3-6
Attachment 6: Ordering	88/6-5
Attachment 7: Billing	None

In addition, I am prepared to sponsor testimony on issue 23/2-5. Joint Petitioners and BellSouth have agreed that they will file a joint motion requesting that the Commission refer this issue to its generic change-of-law docket for resolution, the results of which will then transferred to this docket for appropriate incorporation into the interconnection agreements that result from this docket. If the Commission declines to grant the Joint Motion, Joint Petitioners request the right to supplement this filing with testimony on this and the other issues identified in the motion.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the Joint Petitioners' Position , as set forth with respect to each unresolved issue subsequently herein, and associated contract language on the issues indicated in the chart above.

Xspedius: James Falvey

Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.

A. My name is James C. Falvey. I am the Senior Vice President of Regulatory Affairs for Xspedius Communications, LLC. My business address is 7125 Columbia Gateway Drive, Suite 200, Columbia, Maryland 21046.

Q. PLEASE DESCRIBE YOUR POSITION AT XSPEDIUS.

A. I manage all matters that affect Xspedius before federal, state, and local regulatory agencies. I am responsible for federal regulatory and legislative matters, state regulatory proceedings and complaints, interconnection and local rights-of-way issues. I participated actively in the negotiation of the Agreement that is the subject of this arbitration.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I am a cum laude graduate of Cornell University, and received my law degree from the University of Virginia School of Law. I am admitted to practice law in the District of Columbia and Virginia.

After graduating from law school, I worked as a legislative assistant for Senator Harry M. Reid of Nevada, and then practiced antitrust litigation in the Washington D.C. office of Johnson & Gibbs. Thereafter, I practiced law with the Washington, D.C. law firm of Swidler & Berlin, where I represented competitive local exchange providers and other competitive providers in state and federal proceedings. In May 1996, I joined e.spire Communications, Inc. as Vice President of Regulatory Affairs, where I was promoted to Senior Vice President of Regulatory Affairs in March 2000. I have continued to served in that same position for Xspedius, after Xspedius acquired the bulk of e.spire's assets in August 2002.

Q. PLEASE IDENTIFY ALL STATE COMMISSIONS BEFORE WHICH YOU HAVE TESTIFIED.

A. In total, I have testified before 14 public service commissions, including those of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, New Mexico, Texas, Pennsylvania, Arkansas, and Kansas.

Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING TESTIMONY.

A. I am sponsoring testimony on the following issues:[5]

General Terms and Conditions	2/G-2, 4/G-4, 5/G-5, 6/G-6, 7/G-7, 9/G-9, 12/G-12
Attachment 2: Unbundled Network Elements	26/2-8, 36/2-18, 37/2-19, 38/2-20, 51/2-33
Attachment 3: Interconnection	65/3-6
Attachment 6: Ordering	86/6-3(B), 88/6-5,
Attachment 7: Billing	97/7-3, 100/7-6, 101/7-7, 102/7-8, 103/7-9, 104/7-10

In addition, I am prepared to sponsor testimony on issues 23/2-5, 108/S-1, 111/S-4, 113/S-6 and 114 S-7. Joint Petitioners and BellSouth have agreed that they will file a joint motion requesting that the Commission refer these issues to its generic change-

[5] The following issues have been settled: 1/G-1, 3/G-3, 8/G-8, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 27/2-9, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 43/2-25, 44/2-26, 45/2-27, 46/2-28, 47/2-29, 48/2-30, 49/2-31, 50/2-32, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 57/2-39, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 63/3-4, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/ 4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 94/6-11, 95/7-1, 96/7-2, 98/7-4, 99/7-5, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

of-law docket for resolution, the results of which will then transferred to this docket for appropriate incorporation into the interconnection agreements that result from this docket. If the Commission declines to grant the Joint Motion, Joint Petitioners request the right to supplement this filing with testimony on those issues. Joint Petitioners and BellSouth also agree that issues 109/S-2, 110/S-3 and 112/S-5 are moot.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to offer support for the Joint Petitioners' Position, as set forth with respect to each unresolved issue subsequently herein, and associated contract language on the issues indicated in the chart above.

GENERAL TERMS AND CONDITIONS[6]

Item No. 1, Issue No. G-1 [Section 1.6]: ***This issue has been resolved.***

Item No. 2, Issue No. G-2 *[Section 1.7]: How should "End User" be defined?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 2/ISSUE G-2.

A. The term "End User" should be defined as "the customer of a Party". *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)[7]]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The definition proposed by the Petitioners is simple and avoids controversy. In addition, it is the most natural and intuitive definition. Petitioners have a variety of telecommunications services customers – some wholesale and many retail. The language proposed by the Petitioners is simple, straightforward, and is the best way to avoid unnecessary ambiguity and future controversy. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's original proposed definition unnecessarily invited ambiguity and the potential for future controversy, by turning on the notion that in order to be an End

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6 **Please note that the disputed contract language for all issues raised in this testimony has been attached to this testimony as *Exhibit A*.** With the exception of the language that pertains to the Supplemental Issues, the contract language contained therein represents the most recent proposals as of the date of this filing.

7 The short-hand notations used mean the following: (a) "KMC" means KMC Telecom V, Inc. & KMC Telecom III LLC; (b) "NVX/NSC" means NuVox Communications, Inc. on behalf of its operating entity NewSouth Communications Corp.; (c) "XSP" means Xspedius Communications, LLC and its subsidiaries or affiliates named in this proceeding.

User, the customer must be the "ultimate user of the Telecommunications Service". This was a restrictive definition designed to unlawfully narrow Joint Petitioners' rights to use UNEs to provide telecommunications services to customers of their choosing (which may include wholesale customers). Given that there was absolutely no legal or policy basis to support BellSouth's apparent attempt to limit who can or cannot be Petitioners' customers or whether Petitioners can serve them using UNEs, BellSouth abandoned its original proposal and has twice proposed revisions – its latest including two new definitions including a definition of an undefined term "end user".[8] These latest BellSouth-proposed definitions include new definitions never negotiated nor teed-up for arbitration.[9] Moreover, they are confounding and complex. The new definition of "End User" is unacceptable for two reasons. First, on its face, it contains restrictions that are in contravention of FCC rules, particularly in the fact that it designates "retail service" as the category of permissible service. Second, it is

[8] BellSouth has inserted its new End User/Customer/end user definitions throughout the Agreement. Since the Joint Petitioners have addressed the definition issue in response to this Issue 2/G-2, we will not address every instance in which BellSouth has made this change. Joint Petitioners have no objection to BellSouth's amendment of its own language proposals, provided that such amendments are not intended to expand burdens imposed on Joint Petitioners or to curtail the rights of Joint Petitioners. If either is the case, Joint Petitioners request that the Commission reject such language proposals, even if it is inclined to adopt any BellSouth language proposals (as a general manner, Joint Petitioners request that the Commission adopt each and every one of Joint Petitioners' language proposals and reject each and every one of BellSouth's language proposals).

[9] Joint Petitioners had worked with BellSouth to review the preceding proposal and each use of it in the interconnection agreement. BellSouth's proposed revision has caused Joint Petitioners to have to conduct that review from scratch. Joint Petitioners have completed such a review and still find BellSouth's proposals to be unacceptable. Nevertheless, we will continue to work with BellSouth to resolve this issue (presently, we are awaiting a response from BellSouth). And, we continue to maintain that our definition – *which may not be used to expand or to curtail rights to use UNEs*, collocation and interconnection – is the most appropriate and is preferable to anything BellSouth has proposed thus far.

extremely and unnecessarily complex, thus rendering the Agreement — dozens of its terms that include this defined term — unclear. Another notable deficiency is that this companion definition of "end user" contains the term "End User" twice, creating a tautology and substantial confusion. Further, BellSouth's proposed definitions appear to list specific entities that Petitioners are allowed to serve under the Agreement, creating the risk that the list is under inclusive and accordingly limits Petitioners' choice of customer. At a minimum, the complexity and detail of this proposed definition requires close analysis of and agreement on every use of the term "End User" (or alternatives) throughout its 500 pages in order to ensure that BellSouth's complex verbiage makes sense in every context. Joint Petitioners' definition, being very clear and easily applied, should therefore be adopted.

BellSouth's newly proposed definition continues to have the potential to limit the manner in which Petitioners use UNEs. For example, it appears that BellSouth would like to stop the use of UNEs to serve ISPs and ESPs. There is no legal basis for that restriction and Joint Petitoners squarely reject it. ILEC-imposed use restrictions on UNEs are unlawful, with the exception of the local-service requirements for EELs. From the inception of unbundling, the FCC has held that UNEs may be used by CLECs without ILEC-imposed limitations. In 1996, the question centered on whether CLECs may use UNEs to provide interexchange service; the FCC held that the "plain meaning" of Section 251 —"carriers may seek access to unbundled elements to provide a 'telecommunications service'" — requires that CLECs be able to do so. FCC Rule 51.309 states that an ILEC "shall not impose limitations,

restrictions or requirements on requests for, or the use of, unbundled network elements." That same rationale requires that Joint Petitioners be permitted to choose their customers and serve them with facilities obtained under this Agreement.

Provided that Petitioners comply with the already agreed-upon contractual provisions regarding resale, UNEs and Other Services (defined in Attachment 2), the contract should in no way attempt to limit who can or cannot be considered an End User of a Party's services. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. ARE THERE OTHER REASONS WHY THE LANGUAGE THAT BELLSOUTH HAS PROPOSED IS INADEQUATE?

A. Yes. The definition proposed by BellSouth is inconsistent with the manner in which the term "End User" has been used elsewhere in the Agreement. For example, under BellSouth's proposed definition of "End User," Internet Service Providers ("ISPs") will not be considered "End Users". However, in Attachment 3 of the Agreement, BellSouth has agreed to language regarding "ISP-bound traffic" that does treat ISPs as End Users. This language already has been agreed to. There simply is no need for the tension that exists between this provision and the improperly restrictive and ambiguous definition of End User proposed by BellSouth in the General Terms. Furthermore, Joint Petitioners note that ISPs and ESPs use Telecommunications Services provided by Petitioners and have been considered by the industry to be end users for more than 20 years. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. ARE THERE OTHER APPARENT COMPLICATIONS RAISED BY BELLSOUTH'S PROPOSED DEFINITION?

A. Yes. In connection with Attachment 2, section 5.2.5.2.1, which addresses Enhanced Extended Loop ("EEL") eligibility criteria, BellSouth attempted to replace the word used in the FCC's rules: "customer" with "End User," a word which BellSouth seeks by definition to limit to a potentially vague subset of Joint Petitioners' customers. Now, it apparently seeks to define the word customer in a manner that, if used in the context of the EEL eligibility criteria, could be used to circumscribe the ability of CLECs to use EELs in a manner consistent with the FCC's rules. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS ITEM 2/ISSUE G-2 APPROPRIATE FOR ARBITRATION?

A. BellSouth's Issues Matrix states that Issue G-2 "is not appropriate for arbitration" because "the issue as stated by the CLECs and raised in the General Terms and Conditions of the Agreement has never been discussed by the Parties". BellSouth's Position statement appears to have been drafted by somebody that had not taken part in the negotiations. In any event, it is wrong. The Parties discussed the definition of End User in a number of contexts of the Agreement, including the Triennial Review Order ("TRO")-related provisions of Attachment 2. When Petitioners learned that BellSouth was going to attempt to use the definition of End User to limit its obligation to provide, and CLECs' access to, UNEs and Combinations, they refused to agree to the definition of End User proposed by BellSouth in the General Terms and Conditions. The fact that the issue is teed up in the conflicting versions of the definition contained in the General Terms and Conditions document (a document

controlled by BellSouth) belies BellSouth's patently false claim that the issue had never been discussed by the Parties. Petitioners have sought to clarify, via arbitration, the correct definition of End User so that it may be used consistently throughout the Agreement and so that it cannot be used to diminish Petitioners' right to UNEs or other services under the Agreement. For these reasons, Issue G-2 is properly before the Commission. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Item No. 3, Issue No. G-3 [Section 10.2]: ***This issue has been resolved.***

Item No. 4, Issue No. G-4 *[Section 10.4.1]: What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 4/ISSUE G-4.

A. In cases other than gross negligence and willful misconduct by the other party, or other specified exemptions as set forth in CLECs' proposed language, liability should be limited to an aggregate amount over the entire term equal to 7.5% of the aggregate fees, charges or other amounts paid or payable for any and all services provided or to be provided pursuant to the Agreement as of the day on which the claim arose. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners and BellSouth should establish and fix a reasonable limitation on their respective risk exposure, in cases other than gross negligence or willful misconduct. As this Agreement is an arm's-length contract between commercially-sophisticated parties, providing for reciprocal performance obligations and the pecuniary benefits

as to each such Party, the Parties should, in accordance with established commercial practices, contractually agree upon and fix a reasonable and appropriate, relative to the particular substantive scope of the contractual arrangements at issue here, maximum liability exposure to which each Party would potentially be subject in its performance under the Agreement. The Petitioners, as operating businesses party to a substantial negotiated contractual undertaking, should not be forced to accept and adhere to BellSouth's "standard" limitation of liability provisions, simply because BellSouth has traditionally been successful to date in leveraging its monopoly legacy to dictate terms and impose such provisions on its diffuse customer base of millions of consumers and dozens of carriers requiring BellSouth service. Petitioners' proposal represents a compromise position between limitation of liability provisions typically found in the absence of overwhelming market dominance by one party, in commercial contracts between sophisticated parties and the effective elimination of liability provision proposed by BellSouth. As any commercial undertaking carries some degree of a risk of liability or exposure for the performing party, such risks (along with the contractual, financial and/or insurance protections and other risk-management strategies routinely found in business deals to manage these issues) are a natural and legitimate cost of doing business, regardless of the nature of the services performed or the prices charged for them. As Petitioners are merely requesting that BellSouth accept some measure, albeit a modest one relative to universally-regarded commercial practices, of accountability and contractual responsibility for performance and do not seek to expose BellSouth to any particular risks or excess levels of risk that would not otherwise fall within the general commercial-liability

coverage afforded by any typical insurance policy, the incremental cost or exposure for these ordinary-course, insurable risks is nonexistent or minimal to BellSouth beyond possible costs incurred for the insurance premiums, financial reserves and/or other risk-management measures already maintained by BellSouth in the usual conduct of its business, costs that would in any event likely constitute joint and common costs already factored into BellSouth's UNE rates.

Petitioners' proposal is structured on a "rolling" basis, such that no Party will incur liabilities that in aggregate amount exceed a contractually-fixed percentage of the actual revenue amounts that such Party will have collected under the Agreement up to the date of the particular claim or suit. Thus, for example, an event that occurs in Month 12 of the term of the Agreement would, in the worst case, result in a maximum liability equal to 7.5% of the revenue collected by the liable Party during those first 12 months of the term. This amount is fair and reasonable, and in fact, is far less than that would be at issue under standard liability-cap formulations – starting from a minimum (in some of the more conservative commercial contexts such as government procurements, construction and similar matters) of 15% to 30% of the total revenues actually collected or otherwise provided for over the entire term of the relevant contract — more universally appearing in commercial contracts. Petitioners' proposed risk-vs.-revenue trade-off has long been a staple of commercial transactions across all business sectors, including regulated industries such as electric power, natural resources and public procurements and is reasonable in telecommunications service contracts as well. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth maintains that an industry standard limitation of liability for retail services should apply, which limits the liability of the provisioning party to a credit for the actual cost of the services or functions not performed, or not properly performed. This position is flawed because it grants Petitioners no more than what long-established principles of general contract law and equitable doctrines already command: the right to a refund or recovery of, and/or the discharge of any further obligations with respect to, amounts paid or payable for services not properly performed. Such a provision would not begin to make Petitioners whole for losses they incur from a failure of BellSouth systems or personnel to perform as required to meet the obligations set forth in the Agreement in accordance with the terms and subject to the limitations and conditions as agreed therein. It is a common-sense and universally-acknowledged principle of contracting that a party is not required to pay for nonperformance or improper performance by the other party. Therefore, BellSouth's proposal offers nothing beyond rights the injured party would otherwise already have as a fundamental matter of contract law, thereby resulting in an illusory recovery right that, in real terms, is nothing more than an elimination of, and a full and absolute exculpation from, any and all liability to the injured party for any form of direct damages resulting from contractual nonperformance or mis-performance. Additionally, it is not commercially reasonable in the telecommunications industry, in which a breach in the performance of services results in losses that are greater than their wholesale cost — these losses will ordinarily cost a carrier far more in terms of

direct liabilities vis-à-vis those of their customers who are relying on properly-performed services under this Agreement, not to mention the broader economic losses to these carriers' customer relationships as a likely consequence of any such breach. Petitioner's proposal for a 7.5% rolling liability cap is therefore more appropriate as a reasonable and commercially-viable compromise and should be adopted. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. DOES BELLSOUTH'S PROPOSAL REPRESENT THE INDUSTRY STANDARD?

A. No. BellSouth's proposal represents the standard that BellSouth offers in its template interconnection agreement. It is not in our view "the industry standard" or a standard which should otherwise be imposed by this Commission on Joint Petitioners. Notably, BellSouth's proposal differs markedly from the limitation of liability language used by AllTel in its agreements. A copy of AllTel's limitation of language is attached hereto as Exhibit B. And as Joint Petitioners have indicated previously, BellSouth's proposal also differs markedly from limitation of liability provisions contained in certain CSAs entered into by the Joint Petitioners. Even where Joint Petitioners operate under similar limitation of liability proposals which limit liability to bill credits (note that few customers purchase services out of Joint Petitioners' tariffs, which also differ to some degree from the BellSouth standard), Joint Petitioners' practical experience is that, in order to retain a customer, Joint Petitioners often have to give the customer more that the bill credits to which they would otherwise be entitled.

Q. DO YOU HAVE ANY CLARIFICATIONS TO MAKE REGARDING YOUR PROPOSED LANGUAGE?

A. Yes. During depositions of Joint Petitioner witnesses by BellSouth in Raleigh, it became evident that certain terms used by Joint Petitioners in their proposal could be subject to differing interpretations. To clear any ambiguity and to ensure that the Joint Petitioners maintain a single position for each issue they are jointly arbitrating, Joint Petitioners will stipulate the following:

- By "amounts paid or payable", Joint Petitioners stipulate that this means amounts paid or billed.
- By "the day the claim arose", Joint Petitioners stipulate that this means the day of the incident that gives rise to a claim.

With these proposals, it should be quite clear that it is BellSouth and not the Joint Petitioners that is "gaming".

Q. DO YOU HAVE ANYTHING YOU WISH TO ADD?

A. Yes. The Joint Petitioners have amended their language to clarify the relationship between Issue 4 (limitation of liability) and Issue 7 (indemnification). Joint Petitioners' new language for Section 10.4.1 omits the phrase "except for any indemnification obligations of the parties hereunder." In removing that phrase, the Joint Petitioners make clear that the liability construct in Section 10.4.1 matches their construct for indemnification in Section 10.5. That is, in Section 10.4.1 there is no cap on damages caused by the other party's gross negligence or willful misconduct. Thus, in Section 10.5 there is no cap on a party's indemnification obligations when it causes damage through gross negligence or willful misconduct. In Section 10.4.1, there is a 7.5% cap on liability caused by simple negligence, calculated from the total

revenue paid or billed as of the day the claim arose. Similarly, with Joint Petitioners' new language, there is a 7.5% cap on indemnification when a party causes damages via simple negligence. Joint Petitioners' new language for Section 10.4.1 thus ensures that the two provisions are parallel. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 5, Issue No. G-5 *[Section 10.4.2]: To the extent that a Party does not or is unable to include specific limitation of liability terms in all of its tariffs and End User contracts (past, present and future), should it be obligated to indemnify the other Party for liabilities not limited?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 5/ISSUE G-5.

A. The answer to the question posed in the issue statement is "NO". Petitioners cannot limit BellSouth's liability in contractual arrangements wherein BellSouth is not a party. Moreover, Petitioners will not indemnify BellSouth in any suit based on BellSouth's failure to perform its obligations under this contract or to abide by applicable law. Finally, BellSouth should not be able to dictate the terms of service between Petitioners and their customers by, among other things, holding Petitioners liable for failing to mirror BellSouth's limitation of liability and indemnification provisions in CLEC's end user tariffs and/or contracts. To the extent that a CLEC does not, or is unable to, include specific limitation-of-liability terms in all of its tariffs and customer contracts (past, present and future), and provided that the non-inclusion of such terms is commercially reasonable in the particular circumstances, that CLEC should not be required to indemnify and reimburse BellSouth for that

portion of the loss that would have been limited (as to the CLEC but not as to non-contracting parties such as BellSouth) had the CLEC included in its tariffs and contracts the elimination-of-liability terms that BellSouth was successful in including in its tariffs at the time of such loss. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. First, the language in CLEC tariffs or other customer contracts cannot protect a non-party to those contracts, such as BellSouth, from suits by or potential liability to customers who experience damages as a result of BellSouth's breach of the Agreement or failure to abide by applicable law. Second, it is not reasonable to impose on Petitioners the burden of guaranteeing that their customers will accede to liability language identical to what BellSouth generally obtains. Petitioners do not have the market dominance or negotiating power of BellSouth, and thus do not have the same leverage as BellSouth to dictate terms vis-à-vis their customers. As such, holding Petitioners to a standard that, in actual effect, assumes comparable negotiating positions for Petitioners and BellSouth in their respective markets is inappropriate, since it is clearly in each Party's own business interest, first and foremost, to at all times seek and secure in each particular aspect of its business operations the most favorable limitations on liability that it possibly can obtain. For these reasons, Petitioners propose that they be required to do no more than negotiate liability language that actually reflects the terms that they could reasonably be expected to secure in their exercise of diligence and commercially reasonable efforts to maintain effective contractual protections for their own direct liability interests that

are most critical to their respective businesses. As such, Petitioners request that the Agreement allow them to offer a measure of commercially reasonable terms on liability that they may need in the exercise of their reasonable business judgment to make available to customers in order to conduct their businesses. Accordingly, these terms may at some point need to make allowances, although Petitioners would naturally prefer not to do so if they were in a position to deny such terms, for some level of recovery for service failures. While each Party under the Agreement surely has a significant liability interest in ensuring that the other Party maintains an aggressive approach to tariff-based limitation of liability, such concerns are already adequately and more appropriately addressed by existing provisions of the Agreement and applicable commercial law stipulating that a Party is precluded from recovering damages to the extent it has failed to act with due care and commercial reasonableness in mitigation of losses and otherwise in its performance under the Agreement. In other words, any failure by Petitioners to adhere to these existing standards of due care, commercial reasonableness and mitigation in their tariffing and contracting efforts would, in itself, bar recovery for any otherwise-avoidable losses. In order to allay any concern BellSouth may continue to have notwithstanding the above, Petitioners would agree to include terms that more expressly require each Party to mitigate any damages vis-à-vis third parties, for example a promise to operate prudently and perform routine system maintenance. These terms should make abundantly clear that, even without a rigid tariff-based standard, adequate protection will exist for BellSouth with respect to claims by a third-party customer of

a Petitioner. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has proposed language that would require Petitioners to ensure that their tariffs and contracts include the same limitation of liability terms that BellSouth achieves in its own agreements. This language is unreasonable, anti-competitive and anti-consumer. As mentioned previously, Petitioners should not be required to offer the same tariff liability terms and conditions as BellSouth. Moreover, it is possible that CLECs in certain instances would not be able to obtain the same liability provisions from a customer due to the fact that a CLEC generally has to concede, where it can do so prudently in weighing its business-generation needs against the corresponding liability concerns, on certain terms to attract customers in markets dominated by incumbent providers. Given the vast disparity between BellSouth and the Petitioners in overall bargaining power and their relative leverage in the communications market it is patently unfair for BellSouth to attempt to dictate tariff terms that would limit the Petitioners' recourse and subject it to indemnity obligations by holding it to limitation of liability terms that, in certain instances, may be uniquely obtainable by BellSouth. Such a provision is clearly a one-sided provision for the benefit of BellSouth and should not be adopted. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. DO YOU HAVE ANYTHING YOU WISH TO ADD?

A. Yes. As we have arbitrated this issue in other states, it has become clear that BellSouth is placing undue reliance on its own over-generalization, and misconception of Joint Petitioners' tariffs. Customers rarely purchase service from Joint Petitioners' tariffs. Like BellSouth, we use CSAs. Unlike BellSouth, we are prepared to testify that our CSAs do contain limitation of liability provisions that deviate from those found in our tariffs. Thus, while BellSouth seeks to hinder our ability (by imposing additional costs) to agree to commercially reasonable provisions that include less than the maximum limitation of liability allowed by law, BellSouth seeks to retain its own unhindered right to do so and thereby gain competitive advantage over Joint Petitioners.[10] Accordingly, BellSouth's proposed language is anticompetitive and unnecessary – and it should be rejected.

> ***Item No. 6, Issue No. G-6*** *[Section 10.4.4]: Should the Agreement expressly state that liability for claims or suits for damages incurred by CLEC's (or BellSouth's) customers/End Users resulting directly and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance of obligations set forth in the Agreement are not indirect, incidental or consequential damages?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 6/ISSUE G-6.

A. The answer to the question posed in the issue statement is "YES". Such an express statement is needed because the limitation of liability terms in the Agreement should

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[10] Given the historical nature and volume of services provided by Joint Petitioners to BellSouth under their interconnection agreements, BellSouth's proposed language for Issue 5 would have little if any impact on BellSouth while it could have significant and significantly detrimental impact on Joint Petitioners.

in no way be read so as to preclude damages that CLECs' customers incur as a foreseeable result of BellSouth's performance of its obligations under the Agreement, including its provisioning of UNEs and other services. Damages to customers that result directly, proximately, and in a reasonably foreseeable manner from BellSouth's (or a CLEC's) performance of obligations set forth in the Agreement that were not otherwise caused by, or are the result of, a CLEC's (or BellSouth's) failure to act at all relevant times in a commercially reasonable manner in compliance with such Party's duties of mitigation with respect to such damage should be considered direct and compensable under the Agreement for simple negligence or nonperformance purposes. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. In any contract, including the Agreement, each Party should be liable for damages that are the direct and foreseeable result of its actions. Where the injured person is a customer of one Party, providing relief is no less proper where, as in the case of the Agreement, a contract expressly contemplates that services provided are being directed to such customers. Such liability is an appropriate risk to be borne by any service provider in a contract such as the Agreement that clearly envisions that the effect of performance or nonperformance of such services will be passed through to ascertainable third parties related to the other Party to the contract. In this Agreement, being a contract for wholesale services, liability to injured End Users must be contemplated and covered by express language, subject, in any event, to the forseeability and legal and proximate cause limitation as Petitioners have proposed

for express inclusion in the Agreement in this particular instance as well as in addition to those found in the Agreement's general liability provisions. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's position on liability vis-à-vis end users is somewhat ambiguous insofar as its language merely states that "[e]xcept in cases of gross negligence or willful or intentional misconduct, under no circumstances shall a Party be responsible or liable for indirect, incidental, or consequential damages" while, in other provisions of the Agreement there are disclaimers of liability to End Users that are predicated on specified circumstances (for example, non-negligent damage to End User premises, among others). It is BellSouth's stated position that "[w]hat damages constitute indirect, incidental or consequential damages is a matter of state law at the time of the claim and should not be dictated by a party to an agreement." BellSouth is mistaken. At the onset, liability, limitation of liability, indemnification and damages are all matters of state law, nonetheless BellSouth includes provisions for all of these matters in its template agreement (the starting-point for this Agreement and other BellSouth interconnection agreements). Therefore, BellSouth contradicts itself in claiming the terms of the Agreement cannot address the substance of the Parties' negotiated agreement as to what will constitute, as between such Parties only, indirect, incidental, and/or consequential damages for purposes of their respective liabilities. This is simply a matter of risk allocation among the Parties expressly bound by the terms of this Agreement and, as such, there is no issue of "dictating" the Parties'

agreed understanding on these damages to any third parties as to whom they may arise. Petitioners merely seek a reasonable contractual standard for purposes of allocating these third-party risks as between BellSouth and Petitioners exclusively. If any claim or loss would fail to meet the standards Petitioners propose for inclusion in the Agreement, the Party seeking compensation would simply be forced to bear these risks with respect to its own third parties, regardless of what state law had to say on the particular issue. As such, Petitioners believe that BellSouth miscasts these issues in terms of ambiguous state-law concerns, whereas all that Petitioners are proposing here is a contractual allocation, binding on the Agreement Parties only, of the third-party risks already provided for throughout the Agreement by inserting a fair and reasonable standard that will offer a uniform and definitive statement as to each Party's potential exposure to these third-party risks. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS YOUR POSITION ON BELLSOUTH'S PROPOSED RESTATEMENT OF ITEM 6/ISSUE G-6?

A. Petitioners disagree with BellSouth's proposed restatement of the issue. BellSouth's statement of the issue misses the Parties' core dispute. Petitioners are not disputing the definition of indirect, incidental or consequential damages, but rather seek to establish with certainty that damages incurred by CLEC's (or BellSouth's) End Users to the extent such damages result directly and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance obligations set forth in the Agreement are not included in that definition. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. DO YOU HAVE ANYTHING YOU WISH TO ADD?

A. Yes. During the course of conducting these arbitrations in various states BellSouth has taken to the assertion that the Joint Petitioners have conceded that their own proposed language is of no force or effect. If that were really the case (which it is not), BellSouth should have no problem accepting it. The truth of the matter is that BellSouth intends to quash any end user's efforts to seek redress against BellSouth. We think that is inappropriate as a matter of law and public policy. Because the Agreement is a wholesale agreement that contemplates the provision of services to end users, there may be cases where damages to end users are both direct and reasonably foreseeable. To ensure that BellSouth is held accountable for its own acts and cannot foist costs associated with them on Joint Petitioners, the Commission should adopt Joint Petitioners' proposed language for this issue.

Item No. 7, Issue No. G-7 *[Section 10.5]: What should the indemnification obligations of the Parties be under this Agreement?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 7/ISSUE G-7.

A. The Party providing service under the Agreement should be indemnified, defended and held harmless by the Party receiving services against any claim for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications. Additionally, customary provisions should be included to specify that the Party receiving services under the Agreement should be indemnified, defended and held harmless by the Party providing services against any claims, loss

or damage to the extent reasonably arising from: (1) the providing Party's failure to abide by Applicable Law, or (2) injuries or damages arising out of or in connection with this Agreement to the extent cased by the providing Party's negligence, gross negligence or willful misconduct. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. The Party receiving services under this Agreement is, at a minimum, equally entitled to indemnification as the Party providing services. As is more universally the case in virtually all other commercial-services contexts, the service provider, not the receiving party, bears the more extensive burden on indemnities given the relative disparity among the risk levels posed by the performance of each. In other words, the higher level of risks inherent in service-related activities as compared to the mere payment and similar obligations of the receiving party typically results in a far heavier indemnity undertaking on the provider side. As such, the Party receiving services under this Agreement should, at a minimum, be indemnified for reasonable and proximate losses to the extent it becomes liable due to the other Party's negligence, gross negligence and/or willful misconduct, or failure to abide by Applicable Law. With regard to Applicable Law, the Parties agree in section 32.1 of the General Terms and Conditions that "[e]ach Party shall comply at its own expense with all applicable federal, state, and local statutes, laws, rules, regulations, codes, effective orders, injunctions, judgments and binding decisions, awards and decrees that relate to its obligations under this Agreement ('Applicable Law')". With this provision expressly set forth in the General Terms and Conditions, it is logical that, a

Party should be indemnified to a third-party due to the other Party's failure to comply with Applicable Law, regardless of whether that Party is the providing or receiving Party. The Parties are in an equal contractual position under the Agreement to ensure compliance with Applicable Law as well as the terms and conditions of the Agreement and are, in any event, entitled to the benefit of Agreement provisions limiting any resulting liability or indemnity obligation to a reasonable and foreseeable scope; it is entirely equitable and appropriate for the non-complying Party to indemnify the other for losses resulting from any such breach of Applicable Law. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposal provides that only the Party providing services is indemnified under this Agreement. Not to mention the extent of its deviation from generally-accepted contract norms providing precisely to the contrary, BellSouth's proposal is completely one-sided in that BellSouth, as the predominate provider of services under this Agreement, will be the only Party indemnified and the CLECs as the Parties predominately taking services under the Agreement will be the ones indemnifying BellSouth. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. DO YOU HAVE ANYTHING YOU WISH TO ADD?

A. Yes. BellSouth has modified its proposed contract language to include the caveat that the Party providing services under the Agreement will be indemnified, "except to the extent caused by the providing Party's gross negligence or willful misconduct." This

brings the Parties' proposed language slightly closer in that the Parties now appear to agree that the Party receiving services under the Agreement will not have to indemnify the providing Party in cases of gross negligence or willful misconduct. However, BellSouth still proposes that Joint Petitioners defend and hold harmless BellSouth in cases where BellSouth, as the providing party, is grossly negligent or engages in willful misconduct. Joint Petitioners adamantly oppose such a provision and continue to oppose (adamantly) BellSouth's insistence on "backward" indemnification provisions wherein the receiving party indemnifies the providing party for the providing party's negligence.[11] Joint Petitioners should not get left holding the bag for BellSouth's negligence – it is not our cost of doing business, as BellSouth disingenuously claims.

BellSouth has consistently maintained throughout concurrent arbitration proceedings that indemnification of the Party receiving services is "not appropriate" in this Agreement as it is governed by sections 251 and 252 of the Act and therefore, is not a true commercial agreement. There is no substance to BellSouth's argument. Sections 251 and 252 do not contain any mandate or directive to reverse typical indemnification obligations. Moreover, interconnection agreements are most certainly commercial agreements. The fact that the Commission becomes involved in the arbitration process is merely reflective of Congress's recognition of disparate

[11] Joint Petitioners note that the AllTel agreement excerpt provided as Exhibit B also contains indemnification provisions which differ markedly from those backward provisions that BellSouth proposes the Commission foist upon the Joint Petitioners in this arbitration.

bargaining power as between CLECs and ILECs and in no way suggests that these agreements are not "commercial" in nature.

In addition to the Parties' dispute over who should be indemnified under the Agreement, the Parties still dispute whether breach of Applicable Law should be indemnified. The Joint Petitioners propose that the providing Party must indemnify the receiving Party for any failure to abide by Applicable Law, whereas BellSouth argues that violation of Applicable Law is not a breach of this Agreement. BellSouth is incorrect as, Applicable Law, as precisely defined by the Parties in Section 32 of the General Terms and Conditions, does, by operation of the Georgia law insisted upon by BellSouth and agreed to by Joint Petitioners as governing law, become part of the Agreement to the extent the parties do not agree to be an exception or to be bound by terms that conflict with and thereby displace specific provisions of Applicable Law. Thus, Applicable Law is limited in scope by definition and it is indeed part of the Agreement. The role of Applicable Law is discussed in detail in response to Issue 12/G-12.

Finally, to clear any ambiguity, Joint Petitioners will stipulate that their proposed 7.5% cap on liability for negligence (which is our proposal for Issue 4) applies with respect to indemnification for negligence, as well. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 8, Issue No. G-8 [Section 11.1]: ***This issue has been resolved.***

Item No. 9, Issue No. G-9 *[Section 13.1]: Should a court of law be included in the venues available for initial dispute resolution for disputes relating to the interpretation or implementation of the Interconnection Agreement?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 9/ISSUE G-9.

A. The answer to the question posed in the issue statement is "YES". Either Party should be able to petition the Commission, the FCC, or a court of law for resolution of a dispute. No legitimate dispute resolution venue should be foreclosed to the Parties. The industry has experienced difficulties in achieving efficient regional dispute resolution. Moreover, there is an ongoing debate as to whether state commissions have jurisdiction to enforce agreements (CLECs do not dispute that authority) and as to whether the FCC will engage in such enforcement. In many states, BellSouth has supported legislation designed to strip state commissions of some of their jurisdiction. There is no question that courts of law have jurisdiction to entertain such disputes (see GTC, Sec. 11.5); indeed, in certain instances, they may be better situated to adjudicate a dispute and may provide a more efficient alternative to litigating before up to 9 different state commissions or to waiting for the FCC to decide whether it will or won't accept an enforcement role given the particular facts. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners submit that it is unreasonable to exclude courts of law from the available list of venues available to address disputes under this Agreement. There is no

question that courts of law have proper jurisdiction over disputes arising out of this Agreement, and in fact, BellSouth and the Petitioners have agreed to language providing as much elsewhere in the Agreement, including in Sec. 11.5 of the General Terms and Conditions (and in prior agreements (*see, e.g.*, Xspedius's current agreements at section 15)). Therefore, at a minimum, internal consistency militates in favor of including courts of law as available venues. Furthermore, in a number of instances, such as the resolution of intellectual property issues, tax issues, the determination of negligence, willful misconduct or gross negligence issues, petitions for injunctive relief and claims for damages, courts of law may be better equipped to adjudicate such disputes. The Commission and the FCC are obviously the expert agencies with respect to a number of (if not the majority of) the issues that might arise in connection with this Agreement (and a court can if appropriate defer to the expertise of the state or federal commission under the doctrine of primary jurisdiction, if these types of complaints are brought directly to courts), however the foregoing types of disputes would tax heavily the Commission's expertise and resources.

In addition, administrative efficiency favors inclusion of the courts as venues for dispute resolution. Given that this Agreement, or an Agreement very similar to it, will likely be adopted across BellSouth's nine-state region, the courts may for certain disputes and in certain contexts provide a more efficient alternative to litigating in up to 9 different jurisdictions or to waiting for the FCC, to decide whether or not it will accept an enforcement role given the particular facts.

Petitioners' experience has been that achieving efficient regional dispute resolution is already too difficult and it need not be made more difficult by the elimination of the courts as a possible venue for dispute resolution. As a result of the difficulties inherent in enforcing a multi-state agreement (technically, separate agreements for each state), BellSouth often is able to force carriers into heavily discounted, non-litigated settlements. Such settlements often are heavily discounted to reflect the exorbitant costs associated with litigating an issue that exists region-wide, but that gives rise to a disputed amount that may be too low for a single carrier to justify litigating in each state jurisdiction separately. Foreclosing the courts as a venue for dispute resolution may prevent CLECs from litigating legitimate disputes that cannot efficiently be litigated across 9 different states or at the FCC, where dispute resolution is expensive and uncertain.

At bottom, elimination of the court of law as a venue option for dispute resolution unnecessarily forecloses a viable means for efficient dispute resolution. The Parties must decide on a case-by-case basis the appropriate venue for a particular dispute, and a court of law with competent jurisdiction should not be excluded from those choices. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth recently has revised its proposed language to allow for recourse to a court of law under certain conditions. Petitioners, however, remain concerned that disputes could evolve over "matters which lie outside the jurisdiction or expertise of the

Commission or FCC". Such disputes could hamper efficient dispute resolution. Petitioners fear that the Parties could get mired in such disputes.

BellSouth's new proposal is also inadequate in that it could be used to effectively force CLECs to re-litigate the same issue in 9 different states, or, if claimed damages spread across all the states are too small, not to pursue their rights to enforce compliance with the Agreement at all. While the FCC theoretically may be available as an enforcement venue for disputes arising out of the Agreement, the FCC is often slow to decide as a threshold matter, whether in fact, it will even accept an enforcement role under particular facts. Assuming that the FCC is willing to exercise its jurisdiction (if it decides it has jurisdiction), the FCC often takes many months and in some cases years to render decisions, which, in the context of business contracts that have daily and on-going impact, is unacceptable.

Finally, BellSouth's proposed language could force the needless bifurcation of claims based on breach from related claims based on other legal and equitable theories. Claims brought before a court may be referred to the Commission or FCC, for their expert opinion, if necessary. Forced bifurcation is needlessly burdensome and it may hamper Petitioners' ability to effectively pursue related claims, such as antitrust claims, before a court of competent jurisdiction. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS YOUR POSITION ON BELLSOUTH'S PROPOSED RESTATEMENT OF ITEM 9/ISSUE G-9?

A. Petitioners disagree with BellSouth's proposed restatement of the issue, as it attempts to improperly skew the issue by incorporating the false implication that there are exclusive, efficient and adequate administrative remedies available to address all claims and disputes that may arise under the Agreement and that there is an applicable mandate that such remedies be exhausted before a Party may resort to a court. BellSouth's own insistence that intellectual property related claims and disputes must go directly to a court of law (a provision to which the Petitioners agreed) underscores that BellSouth's premise and position are false. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. DO YOU HAVE ANYTHING YOU WISH TO ADD?

A. Yes. We want to make clear that in seeking to preserve the right to choose to go to a state or federal court of competent jurisdiction in the first instance, Joint Petitioners are not questioning this Commission's concurrent jurisdiction over Section 252 agreements and its areas of substantive expertise. Joint Petitioners in this instance merely seek to preserve rights and options. Any petitioner should have the right to select a forum with jurisdiction. Federal and state courts have jurisdiction over interconnection agreements. The FCC and this Commission also have jurisdiction. BellSouth has offered nothing in return for its proposed limiting of our right to choose a court of law as a dispute resolution forum in the first instance, and we are unwilling to simply give it up – for the preservation of this and other rights likely will become instrumental in our self-preservation. Finally, we note respectfully that BellSouth is

requesting that this Commission to some extent strip state and federal courts of jurisdiction. Obviously, this is not something that the Commission can do or should do. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No. 10, Issue No. G-10 [Section 17.4]: ***This issue has been resolved.***

Item No. 11, Issue No. G-11 [Sections 19, 19.1]: ***This issue has been resolved.***

Item No. 12, Issue No. G-12 *[Section 32.2]: Should the Agreement explicitly state that all existing state and federal laws, rules, regulations, and decisions apply unless otherwise specifically agreed to by the Parties?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 12/ISSUE G-12.

A. The answer to the question posed in the issue statement is "YES". Nothing in the Agreement should be construed to limit a Party's rights or exempt a Party from obligations under Applicable Law, as defined in the Agreement, except in such cases where the Parties have explicitly agreed to a limitation or exemption. Moreover, silence with respect to any issue, no matter how discrete, should not construed to be such a limitation or exception. This is a basic legal tenet and is consistent with both federal and Georgia law (agreed to by the Parties), and it should be explicitly stated in the Agreement in order to avoid unnecessary disputes and litigation that has plagued the Parties in the past. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners' position is intended to be a restatement of Georgia law, which the Parties have agreed is the body of contract law applicable to the Agreement. Because several of the Joint Petitioners have been confronted with BellSouth-initiated litigation in which BellSouth seeks to upend this fundamental principle of Georgia law on contract interpretation, all of the Joint Petitioners believe it is important that the Agreement be explicit on this point. Joint Petitioners will not voluntarily agree to the scheme proposed by BellSouth which is essentially the opposite of applicable Georgia law (agreed to by the Parties) on contract interpretation. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate because it purports to adopt principles that differ from Georgia contract law (already agreed to by the Parties as being the governing contract law) – and, for that matter, black-letter contract law. Joint Petitioners will not voluntarily agree to BellSouth's novel proposal to supplant applicable Georgia law (the choice of the Parties) governing contract interpretation, with a cumbersome scheme that gives BellSouth unknown rights and countless opportunities to limit is obligations under state and federal law. Where the Parties intend for standards to supplant those found in Applicable Law, they must say so expressly or do so by agreeing to terms that conflict with and thereby displace the requirements of Applicable Law. Such an intent cannot be implied and silence with respect to a particular requirement of Applicable Law cannot be read to conflict with or displace

that requirement. This is a fundamental principle of Georgia law, to which the Joint Petitioners decline Bellsouth's request to displace with either BellSouth's original language or the more novel, but still unacceptable, recent replacement terms offered by BellSouth.

Moreover, BellSouth's recently revised contract language proposes not only that the Agreement memorializes all of the Parties' obligations under Applicable law, (a faulty premise discussed below), but also that a Party has the burden of having to petition the FCC or Commission should that Party believe that an obligation, right or other requirement, not expressly memorialized in other provisions of the Agreement (Joint Petitioners submit that the choice of Georgia law and their proposed language expressly memorialize Joint Petitioners' intent that this Agreement not adopt the deviation from applicable Georgia law on contract interpretation proposed by BellSouth), is applicable under Applicable Law and that obligation is disputed by the other Party. Essentially, BellSouth is adding an administrative layer, a potential proceeding to determine whether a Party is or is not bound by Applicable Law. Such a proposal contravenes fundamental principles of contracting and is wasteful for the Parties as well as the Commission.

Although the specifics of this contract law argument might best be left to briefing by counsel, it is important to emphasize that BellSouth's proposal attempts to turn universally accepted principles of contracting on their head. The case of interconnection agreements presents no exception to the rule. Parties to a contract may agree to rights and obligations different than those imposed by Applicable Law.

When they do so, however, they need to do it explicitly. It is far easier to set forth negotiated exceptions to rules than it is to set forth all the rules for which no exceptions were negotiated. Moreover, Petitioners must stress that in the context of their negotiations with BellSouth, they have refused to negotiate away rights for nothing in return. The Act and the FCC and Commission rules and orders do not exist for the purpose of seeing how CLECs and the Commission can detect and overcome attempts by BellSouth to evade obligations that are contained therein with contract language that skirts certain obligations. If BellSouth wants to free itself from an obligation under section 251, or any other provision of Applicable Law (including FCC and Commission rules and orders) it needs to identify that obligation and offer a concession acceptable to Petitioners in exchange – otherwise, consistent with Georgia law, all obligations under Applicable Law are incorporated into this Agreement.

Joint Petitioners request that the Commission reject BellSouth's attempt to impose upon Joint Petitioners an exception that essentially guts the Parties' agreement to have Georgia law govern the interpretation of this Agreement. Indeed, it is fundamental to the Joint Petitioners that the Agreement not deviate from the basic legal tenet that it should not be construed to limit a Party's rights (or obligations) under Applicable Law (except in such cases where the Parties have explicitly agreed to an exception from or other standards that displace Applicable Law), but should encompass all Applicable Law in existence at the time of contracting (on this point, we note that if there is a new FCC order that is released prior to execution but after the Parties have had an opportunity to arbitrate or negotiate appropriate terms, that order should be treated as a change in law which should be addressed in a subsequent

amendment to the Agreement). *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. DO YOU HAVE ANYTHING YOU WISH TO ADD?

A. Yes. The Joint Petitioners have attempted to clarify their intent by proposing revised language that more accurately reflects their position. The Joint Petitioners had initially proposed language stating that nothing in the Agreement would limit the Parties' rights under Applicable Law, unless they agreed to a limitation or exception, we have now revised our language to be specific that the Parties must agree "to an *exception to a requirement of Applicable Law or to abide by provisions which conflict with and thereby displace corresponding requirements of Applicable Law*." This new language is clearer and ensures that the Parties understand that the Agreement is governed by Applicable Law, unless specifically agreed to otherwise. Joint Petitioners' position and proposed language is consistent with both Georgia law (which the parties have selected as governing) and federal law.

Whereas the Joint Petitioners have modified their proposed language to add clarity, BellSouth has modified its language to establish greater uncertainty. According to BellSouth's latest proposed deviation from governing Georgia law, the non-telecommunications law existing at the time of contracting is deemed incorporated into the Agreement, but "substantive Telecommunications law" is excluded from Applicable Law and is not deemed incorporated into the Agreement. Joint Petitioners have entertained BellSouth's request for a blanket exception (with regard to

"substantive Telecommunications law") to the already agreed-upon principles of governing Georgia Law, and we have rejected it.

According to BellSouth's language, should a Party believe that a requirement or obligation set forth by an FCC or Commission rule, order or *substantive Telecommunication Law* applies to the Agreement and is not memorialized in the Agreement, that Party must petition the Commission for resolution. Presumably, this would mean that the Joint Petitioners would have to request that the Commission determine that the law means what it says and that the Parties did not agree to an exception from it or to terms that would conflict with and thereby replace it. This new and needless layer of litigation is wasteful and needlessly seeks to impose costs on the Joint Petitioners and this Commission. BellSouth's latest proposal continues to attempt to turn already agreed to Georgia contracting law on its head. Accordingly, the Commission should reject BellSouth's language as a continued effort to gain non-negotiated exceptions from Applicable Law and adopt the Joint Petitioners' proposed language, which appropriately incorporates Applicable Law and in a manner consistent with Georgia law already agreed to by the Parties. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX), J. Falvey (XSP)]*

Item No.13, Issue No. G-13 [Section 32.3]: ***This issue has been resolved.***

Item No. 14, Issue No. G-14 [Section 34.2]: ***This issue has been resolved.***

Item No. 15, Issue No. G-15 [Section 45.2]: ***This issue has been resolved.***

Item No. 16, Issue No. G-16 [Section 45.3]: ***This issue has been resolved.***

RESALE (ATTACHMENT 1)

Item No. 17, Issue No. 1-1 [Section 3.19]: ***This issue has been resolved.***

Item No. 18, Issue No. 1-2 [Section 11.6.6]: ***This issue has been resolved.***

NETWORK ELEMENTS (ATTACHMENT 2)

Item No. 19, Issue No. 2-1 [Section 1.1]: ***This issue has been resolved.***

Item No. 20, Issue No. 2-2 [Section 1.2]: ***This issue has been resolved.***

Item No. 21, Issue No. 2-3 [Section 1.4.2]: ***This issue has been resolved.***

Item No. 22, Issue No. 2-4 [Section 1.4.3]: ***This issue has been resolved.***

Item No. 23, Issue No. 2-5 *[Section 1.5]: What rates, terms, and conditions should govern the CLECs' transition of existing network elements that BellSouth is no longer obligated to provide as UNEs to other services?*

Joint Petitioners and BellSouth have agreed to file a joint motion requesting that the Commission refer this issue to the generic change-of-law docket for initial resolution and the reincorporation back into this docket for appropriate incorporation into the arbitrated interconnection agreements. If the Commission declines to grant such

motion, or if one is not filed, Joint Petitioners reserve the right to supplement this testimony.

Item No. 24, Issue No. 2-6 [Section 1.5.1]: ***This issue has been resolved.***

Item No. 25, Issue No. 2-7 [Section 1.6.1]: ***This issues has been resolved.***

Item No. 26, Issue No. 2-8 *[Section 1.7]: Should BellSouth be required to commingle UNEs or Combinations with any service, network element or other offering that it is obligated to make available pursuant to section 271 of the Act?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 26/ISSUE 2-8.

A. The answer to the question posed in the issue statement is "YES". BellSouth should be required to "commingle" UNEs or Combinations of UNEs with any service, network element, or other offering that it is obligated to make available pursuant to section 271 of the Act. By that we mean that BellSouth should be required to permit commingling and should be required to perform the functions necessary to commingle a Section 251 UNE or UNE combination with any wholesale service, including those obtained from BellSouth pursuant to any method other than Section 251 unbundling (this would include Section 271 unbundling). *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners' proposed language seeks to ensure that BellSouth will provide UNEs and UNE Combinations commingled with services, network elements and any other offering it is required to provide pursuant to section 271, consistent with the FCC's

rules, which do not allow BellSouth to impose commingling restrictions on stand-alone loops and EELs.

The FCC has defined "commingling" as the connecting, attaching, or otherwise linking of a UNE, or a UNE Combination, to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act, or the combining of a UNE or UNE combination with one or more such wholesale services. Commingling is different from combining (as in a UNE Combination). In the TRO, the FCC specifically eliminated the temporary commingling restrictions that it had adopted and affirmatively clarified that CLECs are free to commingle UNEs and combinations of UNEs with services (*i.e.*, non-UNE offerings), and further clarified that BellSouth is required to perform the necessary functions to effectuate such commingling. The FCC has also concluded that section 271 places requirements on BellSouth to provide network elements, services and other offerings, and those obligations operate completely separate and apart from section 251. Clearly, elements provided under section 271 are provided pursuant to a method other than unbundling under section 251(c)(3). Therefore, the FCC's rules unmistakably require BellSouth to allow the Petitioners to commingle a UNE or a UNE combination with any facilities or services that they may obtain at wholesale from BellSouth, including those obtained pursuant to section 271. This position is supported by the TRO Errata's deletion of the last sentence of footnote 1990 in the TRO which read: "[w]e also decline to apply our commingling rule, set forth in Part VII.A. above, to services that must be offered pursuant to these checklist items." In short, BellSouth's efforts

to isolate – and thereby make useless section 271 elements – should be flatly rejected. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth interprets the FCC's rules as providing no obligation for it to commingle UNEs and Combinations with elements, services, or other offerings that it its required to provide to CLECs under section 271. BellSouth's language turns the FCC's commingling rules on their head, and nothing in the FCC's rules or the TRO supports its interpretation. In fact, the FCC specifically rejected BellSouth's creative but erroneous interpretation of the TRO (including paragraph 35 of the errata to the TRO) when it concluded that CLECs may commingle UNEs or UNE combinations with facilities or services that a it has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act. Services obtained from BellSouth pursuant to section 271 obligations are obviously obtained from BellSouth pursuant to a method other than section 251(c)(3) unbundling, and therefore are not subject to any restrictions on commingling whatsoever. The Commission should therefore reject BellSouth's proposal as anticompetitive and unlawful. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. DO YOU HAVE ANYTHING YOU WISH TO ADD?

A. Yes. The Joint Petitioners have modified their language to track and incorporate the FCC's commingling rules at 47 C.F.R. §§ 51.309(e) and (f). Neither BellSouth nor the Commission should have any concerns adopting the language proposed, for it

specifically references the FCC's rules listed above. BellSouth, on the other hand, has modified its language to state that "[n]othing in this Section shall prevent <<customer_short_name>> from commingling Network Elements with tariffed special access loops and transport services." BellSouth's additional language does nothing to help resolve the issue, as BellSouth's language would still prevent the Joint Petitioners from commingling a Section 251 UNE or UNE Combination with Section 271 network elements. There is nothing in the TRO or the FCC's rules that prohibits a CLEC from commingling a UNE or UNE Combination with any facility or service it may obtain from BellSouth pursuant to section 271. BellSouth's persistent argument that an Errata to the TRO substantively changed the commingling rule is incorrect as a matter of law. The Errata did not carve-out the exception for elements offered only to Section 271 that BellSouth claims. Indeed, BellSouth inexplicably ignores paragraph 31 of the Errata which deleted the final sentence of footnote 1990. By deleting that sentence which, contrary to the commingling rules and text of the commingling section of the TRO, had indicated that there is no obligation to commingle "checklist items". The deletion of that language removes any doubt that the remaining rules and TRO text require commingling including commingling of Section 251 UNEs with elements offered pursuant to section 271. Accordingly, BellSouth's proposed language is still in conflict with federal law and should be rejected, and the Commission should adopt the Joint Petitioners' newly-revised language which specifically incorporates the FCC's commingling rules. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Item No. 27, Issue No. 2-9 [Section 1.8.3]: ***This issue has been resolved.***

Item No. 28, Issue No. 2-10 [Section 1.9.4]: ***This issue has been resolved****.*

Item No. 29, Issue No. 2-11 [Section 2.1.1]: ***This issue has been resolved.***

Item No. 30, Issue No. 2-12 [Section 2.1.1.1]: ***This issue has been resolved.***

Item No. 31, Issue No. 2-13 [Section 2.1.1.2]: ***This issue has been resolved.***

Item No. 32, Issue No. 2-14 [Sections 2.1.2, 2.1.2.1, 2.1.2.2]: ***This issue has been resolved.***

Item No. 33, Issue No. 2-15 [Section 2.2.3]: ***This issue has been resolved.***

Item No. 34, Issue No. 2-16 [Section 2.3.3]: ***This issue has been resolved.***

Item No. 35, Issue No. 2-17 [Sections 2.4.3, 2.4.4]: ***This issue has been resolved.***

Item No. 36, Issue No. 2-18 *[Section 2.12.1]: (A) How should Line Conditioning be defined in the Agreement? (B) What should BellSouth's obligations be with respect to Line Conditioning?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 36(A)/ISSUE 2-18(A).

A. Line Conditioning should be defined in the Agreement as set forth in FCC Rule 47 CFR 51.319 (a)(1)(iii)(A). *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners' language incorporates by reference FCC Rules 51.319(a)(1)(iii) — the Line Conditioning rule — and 51.319(a)(1)(iii)(A) — the definition of Line Conditioning — to describe BellSouth's obligations. This language sets forth, in a simple yet precise way, what BellSouth should be able and willing to provide to Petitioners within the Agreement. This language does not provide Petitioners with anything more than what the FCC rules prescribe. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate because it provides an extensive definition of Line Conditioning that refuses to reference or incorporate the applicable FCC Rule 51.319(a)(1)(iii). Petitioners are not interested in BellSouth's rewriting of the rule which conflates BellSouth's Line Conditioning obligations with its Routine Network Modification obligations. The FCC has rules that govern each. Line Conditioning is not limited to those functions that qualify as Routine Network Modifications.

BellSouth's position statement demonstrates the analytical errors in its contract language, as we have explained. It states that Line Conditioning should be defined as "routine network modification that BellSouth regularly undertakes to provide xDSL services to its own customers". This position does not comport with FCC Rule 319. "Routine network modification" is not the same operation as "Line Conditioning" nor is xDSL service identified by the FCC as the only service deserving of properly engineered loops. Neither BellSouth's position nor its contract language complies

with the law. The FCC created and kept two separate rules to govern these distinct forms of line modification, and the Agreement must reflect this FCC decision. BellSouth's proposal would effectively nullify one of those rules. Petitioners' language should therefore be adopted. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 36(B)/ISSUE 2-18(B).

A. BellSouth should perform Line Conditioning in accordance with FCC Rule 47 C.F.R. 51.319 (a)(1)(iii). *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners request only that the Agreement and BellSouth's obligations thereunder comport with federal law. Petitioners are unwilling to accept BellSouth's attempt to dilute its obligations by effectively eliminating Line Conditioning obligations that the FCC left in place. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language is inadequate for the same reasons discussed previously with respect to issue 2-18(A). BellSouth's proposed language inappropriately attempts to limit its Line Conditioning obligations. For its position statement, BellSouth essentially re-states the same position it provided for Issue 2-18(A). That is, BellSouth will only perform Line Conditioning as a "routine network modification",

in accordance with Rule 51.319(a)(1)(iii), to the extent that BellSouth would do so for its own xDSL customers. For the reasons I have explained, this position is without merit. First, to discuss "routine network modification" as occurring under Rule 51.319(a)(1)(iii) is simply wrong: that term does not appear anywhere in Rule 51.319(a)(1)(iii). Second, it is not permissible under the rules for BellSouth to perform Line Conditioning only when it would do so for itself. The FCC has placed no such limitation on Line Conditioning. Third, BellSouth's repeated insistence that Line Conditioning is only for xDSL services contravenes Rule 51.319(a)(1)(iii), which is absolutely neutral as to the services that can be provided over conditioned loops. The Agreement should accurately reflect BellSouth's obligations as to Line Conditioning, and therefore should include Petitioners' language on that matter, which references the FCC's governing rule. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Item No. 37, Issue No. 2-19 *[Section 2.12.2]: Should the Agreement contain specific provisions limiting the availability of Line Conditioning to copper loops of 18,000 feet or less?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 37/ISSUE 2-19.

A. The answer to the question posed in the issue statement is "NO". The Agreement should not contain specific provisions limiting the availability of Line Conditioning (in this case, load coil removal) to copper loops of 18,000 feet or less in length. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners will not agree to language that provides them no right to order at TELRIC rates Line Conditioning (in this case, load coil removal) on loops that are longer than 18,000 feet. Nothing in Applicable Law would support such a limitation. Petitioners are entitled to obtain loops that are engineered to support whatever service we choose to provide. In charging non-TELRIC rates for conditioning loops over 18,000 feet, BellSouth seeks to create a drag on CLECs' ability to innovate, use new technology and provide advanced services to a market neglected by BellSouth. In essence, BellSouth may preclude Petitioners from providing innovative services to a significant number of customers. In unreasonably attempting to restrict its Line Conditioning obligations, BellSouth is attempting to dictate the service that Petitioners may provide by limiting those services to those that dependent on the technologies that *BellSouth* chooses to deploy. This result is contrary to the 1996 Act, is anticompetitive, and may deprive South Carolina consumers of innovative services that CLECs may choose to provide and that BellSouth would prefer not to. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth has proposed language stating that it "will remove load coils only on copper loops and sub loops that are less than 18,000 feet in length" as a matter of course, but that it will remove load coils on longer loops only at the CLEC's request and at the rates in "BellSouth's Special Construction Process contained in BellSouth's FCC No. 2". This language is unacceptable. First, it has no basis in Applicable Law. Nothing in any FCC order allows BellSouth to treat Line

Conditioning in different manners depending on the length of the loop. Second, BellSouth's imposition of "special construction" rates for Line Conditioning is inappropriate. As Petitioners have explained with respect to several issues in this arbitration, the work performed in connection with provisioning UNEs must be priced at TELRIC-compliant rates. BellSouth's special construction rates are not TELRIC-compliant. Indeed, BellSouth's Tariff FCC No. 2 does not include rates for Line Conditioning, but rather lists the charges imposed on specific carriers for hanging or burying cable, adding UDLC facilities, and the like. Petitioners therefore do not know what rates they would pay for Line Conditioning under this section. Such ambiguity is unacceptable. Accordingly, the Agreement should state that TELRIC-compliant rates shall apply to Line Conditioning for loops of any length.. For all these reasons, BellSouth's language should be rejected. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

Q. ARE YOU CURRENTLY CONTEMPLATING THE DEPLOYMENT OF TECHNOLOGIES THAT MIGHT REQUIRE THE TYPE OF LINE CONDITIONING THAT BELLSOUTH SEEKS TO EXCLUDE FROM THE AGREEMENT?

A. Yes. We are currently exploring at least two technologies designed to derive additional bandwidth from "long" loops. One is called "Etherloop" which should work on loops up to 21,000 feet in length and another is called "G.SHDSL Long" which should work on loops up to 26,000 feet in length. *[Sponsored by **1 CLEC**: J. Willis (NVX/NSC)]*

Item No. 38, Issue No. 2-20 *[Sections 2.12.3, 2.12.4]: Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 38/ISSUE 2-20.

A. Any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged tap will be modified, upon request from CLEC, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to CLEC. Line Conditioning orders that require the removal of other bridged tap should be performed at the rates set forth in Exhibit A of Attachment 2. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners seek to ensure that BellSouth will, at their request, remove bridged tap from loops as necessary to enable the loop to carry Petitioners' choice of service. Federal law provides, without limitation, that CLECs may request this type of Line Conditioning, insofar as they pay for the work required based on TERLIC-compliant rates. Petitioners' language comports exactly with these parameters, stating simply that they may request removal of bridged tap at the rates already provided in the Agreement, excepting bridged tap of more than 6,000 feet, which the Parties agree should be removed without charge. Petitioners have the right to provide the service of their choice, and to obtain loops that can carry those services. The Commission should reject BellSouth's attempt to limit CLEC service offerings to those BellSouth

also chooses to provide. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language would require it to remove only bridged tap "that serves no network design purpose" and is between "2500 and 6000 feet". This language substantially restricts Petitioners' ability to obtain loops that are free of bridged tap, in two ways. First, it leaves entirely to BellSouth's discretion which bridged tap "serves no network design purpose", which is an arbitrary and unworkable standard. Moreover, it is not for BellSouth to unilaterally roll-back its federal regulatory obligations. Second, BellSouth's language precludes the removal of bridged tap that is less than 2500 feet in length, which may significantly impair the provision of high-speed data transmission. Nothing in federal law supports a refusal to remove bridged tap, regardless of the length of or their location on the loop. BellSouth's language would have the effect of depriving consumers of competitive choice of service, and would improperly gate Petitioners' entry into the broadband market. This proposal is unlawful, anticompetitive, and should be rejected.

BellSouth makes two points in its position statement that require comment. First, BellSouth claims that removing bridged tap that either "serves no network purpose" or is "between 0 and 2500" feet constitutes "creation of a superior network". This position is flatly incorrect, as the FCC has expressly held that Line Conditioning does not result in a "superior network". Rather, it is the work necessary to ensure that

existing loops can support the services that a CLEC chooses to provide. BellSouth is not building a "superior network" in this instance, it is merely modifying its existing network. Moreover, removing bridged tap pursuant to the CLEC's request is absolutely required by Rule 51.319(a)(1)(iii) (Line Conditioning). Second, BellSouth states that this issue is "not appropriate for arbitration" because it somehow involves "a request by the CLECs that is not encompassed within … section 251". Yet, the FCC established the Line Conditioning rule under its section 251 authority.

[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]

Item No. 39, Issue No. 2-21 [Section 2.12.6]: ***This issue has been resolved.***

Item No. 40, Issue No. 2-22 [Section 2.14.3.1.1]: ***This issue has been resolved.***

*Item No. 41, Issue No. 2-23 2.16.2.3.2****This issue has been resolved.***

Item No. 42, Issue No. 2-24 [Section 2.17.3.5]: ***This issue has been resolved***

Item No. 43, Issue No. 2-25 [Section 2.18.1.4]: ***This issue has been resolved.***

Item No. 44, Issue No. 2-26 [Section 3.6.5]: ***This issue has been resolved.***

Item No. 45, Issue No. 2-27 [Section 3.10.3]: ***This issue has been resolved.***

Item No. 46, Issue No. 2-28 [Section 3.10.4]: ***This issue has been resolved.***

Item No. 47, Issue No. 2-29 [Section 4.2.2]: (A) ***This issue has been resolved****; (B)* ***This issue has been resolved.***

Item No. 48, Issue No. 2-30 [Section 4.5.5]: ***This issue has been resolved.***

Item No. 49, Issue No. 2-31 [Section 5.2.4]: ***This issue has been resolved.***

Item No. 50, Issue No. 2-32 [Sections 5.2.5.2.1, 5.2.5.2.3, 5.2.5.2.4, 5.2.5.2.5, 5.2.5.2.7]: ***This issue has been resolved.***

Item No. 51, Issue No. 2-33 *[Sections 5.2.6, 5.2.6.1, 5.2.6.2, 5.2.6.2.1, 5.2.6.2.3]: (A)* ***This issue has been resolved.***

(B) Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include?

(C) Who should conduct the audit and how should the audit be performed?

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 51(B)/ISSUE 2-33(B).

A. The answer to the question posed in the issue statement is "YES" . It is the CLECs' position that to invoke its limited right to audit CLEC's records in order to verify compliance with the high capacity EEL service eligibility criteria, BellSouth should send a Notice of Audit to the CLECs, identifying the particular circuits for which BellSouth alleges non-compliance and demonstrating the cause upon which BellSouth rests its allegations. The Notice of Audit should also include all supporting documentation upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of noncompliance. Such Notice of Audit should be delivered

to the CLEC with all supporting documentation no less than thirty (30) days prior to the date upon which BellSouth seeks to commence an audit. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. In order for the CLECs to be adequately prepared to respond to a BellSouth EEL audit request, BellSouth should provide the CLECs with proper notification. CLECs are entitled to know the basis for the audit, to review relevant documentation that forms the basis for the cause alleged, and to know which circuits are implicated by those allegations.. BellSouth has agreed that audits may be conducted only based upon cause; therefore, it should not resist providing documentation that identifies the particular circuits for which Bellsouth alleges non-compliance and the documentation upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of noncompliance. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language does not accept the Joint Petitioners' proposals that the notice identify the circuits for which BellSouth alleges non-compliance and include all documentation used to establish the cause upon which BellSouth rests its allegations. Joint Petitioners' proposal is designed to bring any potential dispute up front and center with relevant documentation available to both Parties so that unnecessary disputes over whether BellSouth may or may not proceed with an audit can be avoided and so that real disputes can be resolved efficiently. Disputes of this nature

have consumed too many resources in the past. By requiring BellSouth to establish the scope and the basis for its claimed right to audit up front, the Joint Petitioners have created a better proposal for eliminating, narrowing and more quickly resolving disputes over whether or not BellSouth has the right to proceed with an EEL audit. In this regard, it is important to note that, although the TRO does not include a specific notice requirement, the Commission may order such a requirement. The TRO only includes "basic principles for EEL audits" and should not be construed as a comprehensive overview of all EEL audit requirements. In fact, the FCC specifically stated, "…we set forth basic principles regarding carriers' rights to undertake and defend against audits. However, we recognize that the details surrounding the implementation of these audits may be specific to related provisions of interconnection agreements or to the facts of a particular audit, and the states are in a better position to address that implementation".

If a Petitioner is going to have to endure the time and expense necessary to comply with a BellSouth audit request, at the very least, BellSouth can provide adequate notice to CLECs setting forth the scope of and cause upon which the audit request is based along with supporting documentation. Such a requirement should place no additional burden on BellSouth, as BellSouth has agreed that it may conduct audits only based upon cause. Moreover, as clearly stated in the FCC's TRO, the Commission is well within its prerogative to order such a notice requirement be included in the Parties' Agreement. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 51(C)/ISSUE 2-33(C).

A. The audit should be conducted by a third party independent auditor mutually agreed-upon by the Parties. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Since the original issue was framed, the Parties have managed to agree on additional language and to reduce this sub-issue to a single specific audit implementation disagreement. The Agreement should eliminate opportunities for dispute over who is entitled to conduct an EEL audit. Joint Petitioners propose that the parties agree on an independent auditor, just as the parties agreed to with respect to PIU and PLU audits conducted pursuant to Attachment 3 of the Agreement. Far too many resources have been consumed in the past over disputes about whether a proposed auditor was independent or not. Joint Petitioners' proposal will address this problem by requiring the parties to do what they have traditionally agreed to do for PIU and PLU audits: mutually agree on an independent auditor. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language for EEL audits does not require the parties to agree on an independent auditor. BellSouth's language simply sets the stage for additional disputes regarding whether or not an auditor it proposes to use is independent. Joint Petitioners are unwilling to subject themselves to audits by entities whose

independence is doubtful and reasonably challenged. Because there are many auditing entities whose independence cannot easily be questioned or challenged (and for whom conflicts will be easy to discern), it seems nonsensical not to address this issue now in order to prevent recurring disputes later. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Item No. 52, Issue No. 2-34 [Section 5.2.6.2.3]: ***This issue has been resolved.***

Item No. 53, Issue No. 2-35 [Section 6.1.1]: ***This issue has been resolved.***

Item No. 54, Issue No. 2-36 [Section 6.1.1.1]: ***This issue has been resolved.***

Item No. 55, Issue No. 2-37 [Section 6.4.2]: ***This issue has been resolved.***

Item No. 56, Issue No. 2-38 [Sections 7.2, 7.3]: ***This issue has been resolved.***

Item No. 57, Issue No. 2-39 [Sections 7.4]: ***This issue has been resolved.***

Item No. 58, Issue No. 2-40 [Sections 9.3.5]: ***This issue has been resolved.***

Item No. 59, Issue No. 2-41 [Sections 14.1]: ***This issue has been resolved.***

INTERCONNECTION (ATTACHMENT 3)

Item No. 60, Issue No. 3-1 [Section 3.3.4 (KMC, NVX/NSC, 3.3.3 XSP]: ***This issue has been resolved.***

Item No. 61, Issue No. 3-2 [Section 9.6 and 9.7]: ***This issue has been resolved.***

Item No. 62, Issue No. 3-3 [Section 10.7.4, 10.9.5, and 10.12.4]: ***This issue has been resolved.***

Item No. 63, Issue No. 3-4 *[Section 10.8.6, 10.10.6 and, 10.13.5]:* ***This issue has been resolved.***

Item No. 64, Issue No. 3-5 [Section 10.5.5.2, 10.5.6.2, 10.7.4.2 and 10.10.6]: ***This issue has been resolved.***

Item No. 65, Issue No. 3-6 *[Section 10.8.1, 10.10. 1, and 10.13]: Should BellSouth be allowed to charge the CLEC a Transit Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 65/ISSUE 3-6.

A. The answer to the question posed, in the issue statement is "NO". BellSouth should not be permitted to impose upon CLECs a Transit Intermediary Charge ("TIC") for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic. The TIC is a non-TELRIC-based additive charge which exploits BellSouth's market power and is discriminatory. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC) , J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners' reasoning for refusing to agree to BellSouth's proposed TIC is threefold. First, BellSouth has developed the TIC predominantly to exploit its monopoly legacy and overwhelming market power. Only BellSouth is in the position of providing transit service capable of connecting all carriers big and small. BellSouth is in this position because of its monopoly legacy and continuing market dominance. To ensure connectivity necessary to allow South Carolina consumers to choose among

carriers big or small, it is essential that this means of interconnection among parties be preserved and not jeopardized by the imposition of non-cost-based rates.

Second, the rate BellSouth seeks to impose – appropriately called the TIC (like its insect namesake, this charge is parasitic and debilitating) – appears to be purely "additive". The Commission has never established a TELRIC-based rate for it. BellSouth already collects elemental rates for tandem switching and common transport to recover its costs associated with providing the transiting functionality. These elemental rates are TELRIC-compliant which, by definition, means that they not only provide BellSouth with cost recovery but they also provide BellSouth with a reasonable profit. BellSouth has recently developed the TIC simply to extract additional profits over-and-above profit already received through the elemental rates.

Third, BellSouth's attempted imposition of the TIC charge on Petitioners is discriminatory. BellSouth does not charge TIC on all CLECs and it appears that, even when it does, it can set the rate at whatever level it desires. Although the TIC proposed by BellSouth in the filed rate sheet exhibits to Attachment 3 is $0.0015, BellSouth had threatened to nearly double that rate, if Petitioners did not agree to it during negotiations. For these reasons, the Commission must find that the TIC charge proposed by BellSouth is unlawfully discriminatory and unreasonable. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC) , J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's language provides for recovery of the TIC. It is BellSouth's position that the proposed rate is justified because BellSouth incurs costs beyond those for which the Commission-ordered rates were designed to address, such as the costs of sending records to third parties identifying the originating carrier. BellSouth, however, has not demonstrated that the elemental rates that have applied for nearly eight (8) years to BellSouth's transiting function do not adequately provide for BellSouth cost recovery. If these rates no longer provide for adequate cost recovery, BellSouth should conduct a TELRIC cost study and propose a rate in the Commission's next generic pricing proceeding. BellSouth should not be permitted unilaterally to impose a new charge without submitting such charge to the Commission for review and approval. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC) , J. Falvey (XSP)]*

Q. WHY IS ITEM 65/ISSUE 3-6 APPROPRIATE FOR ARBITRATION?

A. BellSouth's position statement states that Issue 3-6 should not be included in this Arbitration because "it involves a request by the CLECs that is not encompassed" in section 251 of the 1996 Act. This statement is incorrect. Transiting is an interconnection issue firmly ensconced in section 251 of the Act. Moreover, this functionality has been included in BellSouth interconnection agreements for nearly 8 years – it is not now magically unrelated to its obligations under section 251 of the Act. In addition, transiting functionality is something BellSouth offers in Attachment 3 of the Agreement, which sets forth the terms and conditions of BellSouth's

obligations to interconnect with CLECs pursuant to section 251(c) of Act. Finally, the Parties have discussed and debated the TIC, although to no resolution, throughout the negotiations of this Agreement. For these reasons, there is no doubt that Issue 3-6 is properly before the Commission. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

Item No. 66, Issue No. 3-7 [Section 10.1]: ***This issue has been resolved.***

Item No. 67, Issue No. 3-8 [Section 10.2, 10.2.1, 10.3]: ***This issue has been resolved.***

Item No. 68, Issue No. 3-9 [Section 2.1.12]: ***This issue has been resolved.***

Item No. 69, Issue No. 3-10 [Section 3.2, Ex. A]: ***This issue has been resolved***

Item No. 70, Issue No. 3-11 [Sections 3.3.1, 3.3.2, 3.4.5, 10.10.2]: ***This issue has been resolved.***

Item No. 71, Issue No. 3-12 [Section 4.5]: ***This issue has been resolved.***

Item No. 72, Issue No. 3-13 [Section 4.6]: ***This issue has been resolved.***

Item No. 73, Issue No. 3-14 [Sections 10.10.4, 10.10.5, 10.10.6,10.10.7]: ***This issue has been resolved.***

COLLOCATION (ATTACHMENT 4)

Item No. 74, Issue No. 4-1 [Section 3.9]: ***This issue has been resolved.***

Item No. 75, Issue No. 4-2 [Sections 5.21.1, 5.21.2]: ***This issue has been resolved.***

Item No. 76, Issue No. 4-3 [Section 8.1, 8.6]: ***This issue has been resolved.***

Item No. 77, Issue No. 4-4 [Section 8.4]: ***This issue has been resolved.***

Item No. 78, Issue No. 4-5 [Section 8.6]: ***This issue has been resolved.***

Item No. 79, Issue No. 4-6 [Sections 8.11, 8.11.1, 8.12.2]: ***This issue has been resolved.***

Item No. 80, Issue No. 4-7 [Section 9.1.1]: ***This issue has been resolved.***

Item No. 81, Issue No. 4-8 [Sections 9.1.2, 9.1.3]: ***This issue has been resolved.***

Item No. 82, Issue No. 4-9 [Sections 9.3]: ***This issue has been resolved.***

Item No. 83, Issue No. 4-10 [Sections 13.6]: ***This issue has been resolved.***

ORDERING (ATTACHMENT 6)

Item No. 84, Issue No. 6-1 [Section 2.5.1]: ***This issue has been resolved.***

Item No. 85, Issue No. 6-2 [Section 2.5.5]: ***This issue has been resolved.***

Item No. 86, Issue No. 6-3 *[Sections 2.5.6.2, 2.5.6.3]: (A) This issue has been resolved. (B) How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 86(B)/ISSUE 6-3(B).

A. If one Party disputes the other Party's assertion of non-compliance, that Party should notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within a reasonable time or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting the non-compliance, the requesting Party should proceed pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions and the Parties should cooperatively seek expedited resolution of the dispute. "Self help", in the form of suspension of access to ordering systems and discontinuance of service, is inappropriate and coercive. Moreover, it effectively denies one Party the due process contemplated by Dispute Resolution provisions incorporated in the General Terms and Conditions of the Agreement. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Self help is nearly always an inappropriate means of handling a contract dispute. If there is a dispute, it should be handled in accordance with the Dispute Resolution provisions of the contract and not under the threat of suspension of access to OSS or termination of all services. If BellSouth is truly concerned about quickly resolving

such issues, it should not continue to oppose including a court of law as an appropriate venue for dispute resolution.

The language proposed by Joint Petitioners sets forth a reasonable process that will occur should a Party receive a notice of noncompliance with CSR access rules. It does not provide for unilateral imposition of "pull-the-plug" type remedies such as suspension of ordering and provisioning functions or termination of all services to Joint Petitioners and their South Carolina customers. Such remedies are disproportionate in almost any conceivable context and the threat of them is simply coercive. Such remedies should only be imposed by the Commission after careful review of all the facts and an appropriate assessment of how any contemplated remedies address the perceived harms and may impact customers. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's original language provided little more than the threat of suspension of access to OSS and the termination of all services (regardless of its potential impact on its competition or customers who have been disloyal to BellSouth). BellSouth recently revised this language to indicate that if there is a dispute regarding the alleged CSR access issue, the alleging party will seek dispute resolution before the Commission. While this post-filing change of position is a welcome development, BellSouth's proposed language curiously retains the menu of debilitating pull-the-plug remedies, e-mail notice not previously agreed to by the parties as a proper form

of notice in this context, and impossibly short response windows. Thus, BellSouth's proposal remains unacceptable as no one can tell or explain why the inappropriate pull-the-plug provisions remain or when BellSouth might seek to threaten their use or unilaterally avail itself of them. With such ambiguity and so much at stake, BellSouth's proposed language must be rejected.

We also note that BellSouth witnesses have testified under oath in other jurisdictions that any dispute would trigger an obligation (for BellSouth as the alleging party) to file for dispute resolution and that it would not seek to impose any remedy during the pendancy of such a dispute. We need to see those commitments memorialized in contract language. The continued presence of unreasonably short response times and pull-the-plug remedies in BellSouth's, proposal creates needless ambiguity and too much room for gamesmanship by BellSouth and its fleet of attorneys. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Item No. 87, Issue No. 6-4 [Section 2.6]: ***This issue has been resolved.***

Item No. 88, Issue No. 6-5 *[Section 2.6.5]: What rate should apply for Service Date Advancement (a/k/a service expedites)?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 88/ISSUE 6-5.

A. Rates for Service Date Advancement (a/k/a service expedites) related to UNEs, interconnection or collocation should be set consistent with TELRIC pricing

principles. *[Sponsored by: M. Johnson (KMC), J. Willis NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. All aspects of UNE ordering and provisioning must be priced at TELRIC. This same rule should apply to Service Date Advancements. Petitioners are entitled to access the local network and obtain elements at forward-looking, cost-based rates. Where they require such access on an expedited basis, which is sometimes necessary in order to meet a customer's needs, Petitioners should not be subject to inflated, excessive fees that were not set by the Commission and that do not comport with the TELRIC pricing standard. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's position is that it is not required to provide expedited service pursuant to the Act. Therefore, BellSouth's language states that BellSouth's tariffed rates for service date advancement will apply. BellSouth's tariffed rate, however, is $200.00 per element, per day. Thus, for example, a request to speed up an order for a 10-line customer by 2 days would cost $4,000.00. This fee is unreasonable, excessive and harmful to competition and consumers. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

Q. IS ITEM 88/ISSUE 6-5 AN APPROPRIATE ISSUE FOR ARBITRATION?

A. Obviously, the answer to this question is "yes". The manner in which BellSouth provisions UNEs is absolutely within the parameters of section 251. Where

Petitioners require expedited provisioning, that request remains part of the overall UNE provisioning scheme. And, as we have explained, that request should result in TELRIC rates as for any other UNE order. BellSouth's position that "this issue is not appropriate in this proceeding" is therefore incorrect. Setting prices and arbitrating the terms and provisions associated with section 251 unbundling are squarely within the Commission's jurisdiction and are appropriately resolved in this arbitration proceeding. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

Item No. 89, Issue No. 6-6 [Section 2.6.25]: ***This issue has been resolved.***

Item No. 90, Issue No. 6-7 [Section 2.6.26]: ***This issue has been resolved.***

Item No. 91, Issue No. 6-8 [Section 2.7.10.4]: ***This issue has been resolved.***

Item No. 92, Issue No. 6-9 [Section 2.9.1]: ***This issue has been resolved.***

Item No. 93, Issue No. 6-10 [Section 3.1.1]: ***This issue has been resolved.***

Item No. 94, Issue No. 6-11 *[Sections 3.1.2, 3.1.2.1]:* ***This issue has been resolved.***

BILLING (ATTACHMENT 7)

*Item No. 95, Issue No. 7-**1** [Section 1.1.3]:* ***This issue has been resolved.***

Item No. 96, Issue No. 7-2 *[Section 1.2.2]:* ***This issue has been resolved.***

Item No. 97, Issue No. 7-3 *[Section 1.4]: When should payment of charges for service be due?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 97/ISSUE 7-3.

A. Payment of charges for services rendered should be due thirty (30) calendar days from receipt or website posting of a complete and fully readable bill or within thirty (30) calendar days from receipt or website posting of a corrected or retransmitted bill, in those cases where correction or retransmission is necessary for processing. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners need at least 30 days to review and pay invoices. In other commercial settings in which parties have established business relationships, the payor may be afforded 45 days or more to pay an invoice. Furthermore, it is not uncommon for parties to a contract to develop a course of dealings in which a party is not strictly held to a certain payment date. Nevertheless, in order to try to settle as many billing issues as possible, Petitioners agreed to BellSouth's proposal for a thirty (30)-day payment deadline (one billing cycle). Under such a strict deadline, it is imperative that CLECs be given the full thirty (30) days to review and pay those bills. It is Petitioners' experience, however, that BellSouth is consistently untimely in posting or delivering its bills and those bills are often incomplete and sometimes incomprehensible. Therefore, in effect BellSouth is actually giving Petitioners far fewer than thirty (30) days to pay invoices, which is neither typical nor acceptable in a commercial setting, especially in this case, where the bills are numerous,

voluminous and complex. Thus, the Commission should find that the thirty (30)-day payment due date must be established from the time a Petitioner receives a complete and fully readable bill via mail or website posting. *[Sponsored by**:** M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. HAVE YOU TRACKED HOW LONG IT TAKES BELLSOUTH TO POST OR DELIVER ITS BILLS?

A. Yes. NuVox tracked the issue for its NewSouth operating entity, as BellSouth has billed and for the time being will continue to bill NewSouth separately. NewSouth's experience has been that, by the time it receives its bills from BellSouth, it has anywhere from 19-22 days to process bills for payment. This amount of time is inadequate as it does not allow NewSouth to effectively and completely review and audit the bills it receives from BellSouth. *[Sponsored by **1 CLEC**: H. Russell (NVX/NSC)]*

Q. HAVE YOU TRACKED THE DIFFERENCE BETWEEN THE DATE BELLSOUTH POSTS ON THE BILL AND THE DATE THE BILL IS RECEIVED BY XSPEDIUS?

A. Yes. My company has tracked the difference between the date posted on the BellSouth bill and the date the bill is actually received by Xspedius. We began tracking this data in December, 2003. Our results demonstrate that it takes on an average 6.45 days for Xspedius to receive a bill from BellSouth. Although the average time is 6.45 days, we have tracked bills that Xspedius has received from BellSouth in as little as 2 days and as long as 22 days. *[Sponsored by **1 CLEC**: J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language provides that payment of charges for services rendered must be made on or before the next bill date. This language is inadequate in that it does not account for the fact that there is typically a long gap between the time a bill is "issued" and the date upon which it is made available to or delivered to a Petitioner. BellSouth's language also makes no attempt to mitigate the problems caused in circumstances when its invoices are incomplete and/or incomprehensible. When this occurs, the CLEC already has a late start in paying the invoice and then may also need to spend extraordinary amounts of time attempting to reconciling an such invoices. Therefore, under BellSouth's proposal Petitioners are not getting thirty (30) days to remit payment.

The Commission should take note that not only is less than thirty (30) days to remit payment for services rendered unacceptable in most commercial settings, but CLECs have the added burden of extraordinary pressure from BellSouth to pay on time. The alterative to paying on time is that Petitioners' capital will be tied up in security deposits and/or late payments. By proposing the next bill date as the payment due date as opposed to thirty (30) days after receipt of a complete and readable bill, BellSouth does not afford Petitioners adequate time to review and pay invoices and unfairly raises the likelihood that a Petitioner would be forced to tie-up much needed capital in a deposit. BellSouth is, in essence, using its monopoly legacy and bargaining position to force CLECs to either remit payment faster than almost any other business or in the alternative face substantial late payment penalties and

increased security deposits. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Item No. 98, Issue No. 7-4 [Section 1.6]: ***This issue has been resolved.***

Item No. 99, Issue No. 7-5 [Section 1.7.1]: ***This issue has been resolved.***

Item No. 100, Issue No. 7-6 *[Section 1.7.2]: Should CLEC be required to pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 100/ISSUE 7-6.

A. The answer to the question posed in the issue statement is "NO". CLECs should not be required to calculate and pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination. Rather, if a Petitioner receives a notice of suspension or termination from BellSouth, with a limited time to pay non-disputed past due amounts, Petitioner should be required to pay only those amount past due as of the date of the notice and as expressly and plainly indicated on the notice, in order to avoid suspension or termination. Otherwise, CLEC will risk suspension or termination due to possible calculation and timing errors. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. If a Petitioner receives a notice of suspension or termination from BellSouth, it will be Petitioner's immediate goal to pay the past due amounts included in the notice to

avoid suspension and termination. If the Petitioner must attempt to calculate and pay past due amounts in addition to those specified in BellSouth's notice, the Petitioner unfairly will risk suspension or termination due to possible calculation and timing errors. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. COULD YOU PLEASE EXPLAIN WHAT WOULD LIKELY HAPPEN AT YOUR COMPANY UPON RECEIPT OF A NOTICE OF SUSPENSION OR TERMINATION DUE TO NONPAYMENT?

A. Yes, if we or someone at our companies received a notice of suspension or termination from BellSouth, it would create nothing less than a "fire drill". Whoever received the notice would immediately work to determine whether such payments were missing, not posted, disputed, or simply due and, in the latter case would arrange to deliver payment to BellSouth as fast as possible. Access to BellSouth's OSS is essential to the daily operation of our companies – we take the threat of suspension of such access very seriously. Obviously, another reason why the threat of termination is taken very seriously, is that suspension would create service disruption and termination would result in massive service outages across our South Carolina customer base. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. UNDER SUCH A SCENARIO, HOW WOULD YOU BE HINDERED IF YOU WERE REQUIRED TO CALCULATE OTHER POSSIBLE PAST DUE AMOUNTS?

A. Under the threat of suspension or termination, our billing personnel would be working as fast as possible to track and pay the amount specified as past due on the

suspension or termination notice. Obviously, there is time pressure to perform an investigation into the circumstances and to resolve the matter by identifying any discrepancies and securing payment of the amount specified. Any time or resources that we would have to expend in trying to calculate any possible additional past due amounts that may become past due in the time period between the date on which BellSouth calculated the past due amount (which may or may not be known) and the date on which BellSouth would receive and post payment (which, with respect to posting only, will not be known) would be taken away from time needed to investigate and secure payment of the amount specified on the suspension or termination notice. But, the more significant hindrance is the "shell game" that would ensue if Petitioner had to guess the precise amount that BellSouth calculated upon receipt and posting of payment that was needed to satisfy the payment of all amounts past due requirement BellSouth seeks to impose. Under that circumstance, only BellSouth can know (and control) the answer to that calculation, as it knows the date upon which it first calculated the past due amount included in the notice and the date upon which it posts receipt of payment. Indeed, under BellSouth's proposal, it could simply delay posting of payment by a day if it was determined to suspend or terminate service. Like many others, this BellSouth proposal seeks unfairly to leverage its monopoly legacy and overwhelming dominance by putting Petitioners in a position that would not be acceptable in a typical commercial setting. The worst part of it, however, is that BellSouth once again proposes to use the specter of consumer affecting service outages as a means of putting CLECs at the mercy of a

reluctant seller. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth proposes that in response to a notice of suspension or termination, a CLEC must pay not only the amount included in the notice, but all other amounts not in dispute that become past due. BellSouth's proposed language places too much burden and risk on CLECs who are forced to calculate possible past due amounts in addition to those included in the BellSouth notice to avoid suspension or termination of service. As just explained, BellSouth's proposal amounts to a high stakes shell game that could result in massive service outages for our South Carolina customers, if Joint Petitioners fail to properly track, time, trace and predict BellSouth's behavior (which can be manipulative) in a manner that allows us to arrive at a "magic number" needed to avoid suspension or termination. Obviously, such terms and conditions are unreasonable in any setting and especially in this one where consumers' service hangs in the balance. BellSouth has recently proposed new language for Section 1.7.2 that evidences a partial and unsatisfactory attempt to address Joint Petitioners' concerns. This language includes a new sentence at the end of the provision. Joint Petitioners do not believe that this new language solves the problem of calculating additional amounts that may become past due across hundreds of bills. Rather than agree to Joint Petitioners' straightforward proposed language, BellSouth offers only to "provide information" of other amounts due and only "upon request." It is not offering to consolidate all amounts that must be paid into one Notice in order that

Petitioners may simply pay it and avoid suspension or termination. The requests that must be made could pertain to scores of bills and accounts – and BellSouth has made no commitment to provide such information in a timely manner, so as to permit it to short-circuit an appropriate notice requirement with respect to accounts and amounts that subsequently become past due. Thus, BellSouth's new language does not eliminate the "shell game" problem from this dispute. Accordingly, the Commission should reject BellSouth's language, even as amended. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Item No. 101, Issue No. 7-7 *[Section 1.8.3]: How many months of billing should be used to determine the maximum amount of the deposit?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 101/ISSUE 7-7.

A. The maximum amount of a deposit should not exceed two month's estimated billing for new CLECs or one and one-half month's actual billing for existing CLECs (based on average monthly billings for the most recent six (6) month period). The one and one-half month's actual billing deposit limit for existing CLECs is reasonable given that balances can be predicted with reasonable accuracy and that significant portions of services are billed in advance. Alternatively, Joint Petitioners are willing to accept a one month maximum for services billed in advance and two month maximum for services billed in arrears. BellSouth recently agreed to this alternative set of maximum amounts with ITC^DeltaCom. (The relevant section of the ITC^DeltaCom

agreement is attached hereto as Exhibit C). *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. Petitioners have engaged in tremendous compromise with BellSouth in an attempt to settle deposit issues and limit the issues for arbitration. It is not typical in commercial relationships for one side to continually try to extract deposits from the other. Nevertheless, in trying to settle deposit issues, Petitioners agreed to language that expands BellSouth's right to collect deposits well beyond what is found in its typical tariffs. In addition to attempting to resolve an issue that has long vexed the Parties (a protracted battle over these issues was played out before the FCC about two years ago), the Parties tried, through negotiations, to develop new contract language for deposits uniformly applicable across the nine state BellSouth region. The primary goals of this exercise were to draft deposit provisions that address BellSouth's asserted need for security deposits with Petitioners' need to limit tying-up capital in such deposits and to be able to clearly ascertain the circumstances when deposits would be required and returned.

In particular, Petitioners believe that the deposit terms should reflect that each, directly and through its predecessors, has already had a long and substantial business relationship with BellSouth. Accordingly, it is reasonable to treat Petitioners differently from other entities that have no established business relationship with BellSouth. The one and one-half month's actual billing deposit limit for existing CLECs proposed by Petitioners is reasonable given that balances can be predicted with reasonable accuracy and that significant portions of services are billed in

advance. Moreover, Petitioners believe that it is more generous to BellSouth than terms to which BellSouth has previously agreed. Additionally, the calculations for existing CLECs, which include all the CLECs in this arbitration, should be based on average monthly billings for the most recent six (6) month period. This way, any deposit required by BellSouth will reflect the most recent billing patterns and will eliminate any potential to skew a deposit requirement by using a base timeframe that may not accurately reflect the CLECs' current billing. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language establishes a deposit based on an estimated two month's actual billing for existing customers and two month's estimated billing for new customers. BellSouth's language fails to take into account that the CLECs involved in this arbitration have established business relationships with BellSouth with significant billing history. For these reasons, they should not be subject to the same deposit requirements as new CLEC customers with no established business relationship with BellSouth. Through these negotiations, BellSouth has argued that the Agreement must include deposit provisions that not only work for Petitioners, but that will also work for other carriers that may adopt the Agreement. To accommodate BellSouth's position in that this Agreement will likely be adopted by other carriers, Petitioners' proposed language includes a separate deposit requirement for existing CLEC customers (one and one-half month's actual billing) as well as new CLEC customers (two month's estimated billing). This dual approach can apply in a

reasonable and non-discriminatory manner to both the CLECs involved in the instant case as well as any new carriers that may adopt the final Agreement. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Item No. 102, Issue No. 7-8 *[Section 1.8.3.1]: Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to CLEC?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 102/ISSUE 7-8.

A. The answer to the question posed in the issue statement is "YES". The amount of security due from an existing CLEC should be reduced by amounts due to CLEC by BellSouth aged over thirty (30) calendar days. BellSouth may request additional security in an amount equal to such reduction once BellSouth demonstrates a good payment history, as defined in the deposit provisions of Attachment 7 of the Agreement. This provision is appropriate given that the Agreement's deposit provisions are not reciprocal and that BellSouth's payment history with CLECs is often poor. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As mentioned above, Petitioners have compromised significantly throughout the negotiations of these deposit provisions in order to reach a reasonable and balanced solution that can work throughout the BellSouth territory. As such, the CLECs conceded to give up the right to reciprocal deposits in an effort to settle one potential arbitration issue. But, if Petitioners do not collect deposits they should at least have

the ability to reduce the amount of security due to BellSouth by the amounts BellSouth owes CLEC that have aged thirty (30) days or more. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. DOES BELLSOUTH TYPICALLY HAVE SIGNIFICANT BALANCES OWED TO CLECs AGED OVER THIRTY DAYS?

A. Yes, BellSouth does not have a pristine or even good payment record when it comes to paying CLECs the amounts BellSouth owes under its interconnection agreements. Thus, reducing deposit amounts the Petitioners would owe BellSouth is a reasonable means to protect the CLECs' financial interest, as the remainder of the deposit provisions protect BellSouth's financial interests. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. First, BellSouth's proposed language would exclude disputed amounts. In the past, BellSouth has disputed massive amounts due to some CLECs, only later to be ordered to pay up. While such disputes are pending, the financial risk is shifted to CLECs and any BellSouth risk is mitigated by its retention of those amounts properly due CLECs. Moreover, the offset restoration provision proposed by BellSouth makes its offer to offset empty. Notably, BellSouth's provision demands that once it pays its bills that it has no dispute with, the CLEC must restore amounts, including amounts that could easily be in excess of the offset, so that BellSouth receives the full amount of security deposit originally requested (despite whether the CLEC disputes BellSouth's entitlement to that amount or whether BellSouth and the CLEC have negotiated a

lower amount – which is often the case). Moreover, BellSouth refused to abide by the same "good payment history" definition it imposes upon CLECs. The CLECs' offset proposal is superior in that, once the agreed-upon amount of deposit the CLECs owes BellSouth is decreased by amounts BellSouth has failed to pay the CLECs, the resulting deposit amount will more accurately reflect BellSouth's actual exposure to potential nonpayment and the provisions for restoration of the deposit offset are fair and equitable. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Item No. 103, Issue No. 7-9 *[Section 1.8.6]: Should BellSouth be entitled to terminate service to CLEC pursuant to the process for termination due to non-payment if CLEC refuses to remit any deposit required by BellSouth within 30 calendar days?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 103/ISSUE 7-9.

A. The answer to the question posed in the issue statement is "NO". BellSouth should have a right to terminate services to CLEC for failure to remit a deposit requested by BellSouth **only** in cases where: (a) CLEC agrees that such a deposit is required by the Agreement, or (b) the Commission has ordered payment of such deposit. A dispute over a requested deposit should be addressed via the Agreement's Dispute Resolution provisions and not through "self-help". *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. As with numerous other provisions in this Attachment, Petitioners' proposed language counters BellSouth's proposal to "pull the plug" on CLEC service without following the Dispute Resolution provisions of the Agreement. Such self-help actions must be limited to those circumstances where the CLEC agrees that a deposit is required by the Agreement, or the Commission has ordered payment for the deposit. If there is a dispute as to the need or amount of a security deposit, BellSouth must not be able to terminate service to CLEC without following the Dispute Resolution provisions of the Agreement. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language would allow BellSouth to terminate service to CLEC under any circumstance in which CLEC has not remitted a deposit requested by BellSouth within thirty (30) calendar days. The only way to avoid such dire consequences would be for the CLEC to file for dispute resolution before this and up to eight other state commissions and to post deposit bonds while such disputes resolution cases are pending (these onerous burden and presumption shifting provisions are at issue in Issue 104). The broad and sweeping language proposed by BellSouth for Issue 103 would allow BellSouth to circumvent the Dispute Resolution provisions of the Agreement and simply "pull the plug" on CLEC services even in the event of a valid dispute regarding the required amount of a requested security deposit. BellSouth must be required to follow the Dispute Resolution provisions and the

Commission must prevent BellSouth from taking any unilateral self-help action that will ultimately harm or terminate consumers' service. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Item No. 104, Issue No. 7-10 *[Section 1.8.7]: What recourse should be available to either Party when the Parties are unable to agree on the need for or amount of a reasonable deposit?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 104/ISSUE 7-10.

A. If the Parties are unable to agree on the need for or amount of a reasonable deposit, either Party should be able to file a petition for resolution of the dispute and both parties should cooperatively seek expedited resolution of such dispute. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHAT IS THE RATIONALE FOR YOUR POSITION?

A. It is reasonable to assume that the Parties may disagree as to the need for or required amount of a security deposit (there has been disagreement in the past). In the event of such a dispute that the Parties are unable to reach a negotiated settlement on (which typically has happened in the past), either Party may file a petition for dispute resolution in accordance with the Dispute Resolution provisions set forth in the Agreement. Such action is consistent with how disputes are handled throughout the Agreement and is the purpose of the Dispute Resolution provisions. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Q. WHY IS THE LANGUAGE THAT BELLSOUTH HAS PROPOSED INADEQUATE?

A. BellSouth's proposed language acknowledges that a Party can file a petition for dispute resolution in the event there is a dispute as to the need and amount of deposit, but BellSouth proposes that the CLECs must post a payment bond for half the amount of the requested deposit during the pendency of the dispute resolution proceeding. According to BellSouth's language, posting a bond is a condition to avoid suspension or termination of service during the pendency of the dispute proceeding. This BellSouth bond requirement completely negates the purpose of the Dispute Resolution provisions. If a CLEC is forced to post its funds during the pendency of the dispute resolution proceeding, that unfairly puts the CLEC in the position of losing the dispute (and BellSouth in the position of winning the dispute) before it has been properly adjudicated and resolved. Thus, BellSouth's proposed language would effectively allow BellSouth to override the Dispute Resolution provisions of the Agreement by terminating service to CLEC if CLEC does not post a payment bond for half the amount of the requested deposit that CLEC, in that instance, already would have asserted is not required under the Agreement. Finally, BellSouth's insistence that it be the CLEC that has to file for Dispute Resolution is untenable. As BellSouth would be seeking relief (in the form of deposit), it is BellSouth that should have the burden of filing any complaint that it deems necessary. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

Item No. 105, Issue No. 7-11 [Section 1.8.9]: ***This issue has been resolved.***

Item No. 106, Issue No. 7-12 [Section 1.9.1]: ***This issue has been resolved.***

BONA FIDE REQUEST/NEW BUSINESS REQUEST (BFR/NBR)

(ATTACHMENT 11)

Item No. 107, Issue No. 11-1 [Sections 1.5, 1.8.1, 1.9, 1.10]: ***This issue has been resolved.***

SUPPLEMENTAL ISSUES

(ATTACHMENT 2)

Item No. 108, Issue No. S-1*: How should the final FCC unbundling rules be incorporated into the Agreement?*

Joint Petitioners and BellSouth have agreed to file a joint motion requesting that the Commission refer this issue to the generic change-of-law docket for initial resolution and the reincorporation back into this docket for appropriate incorporation into the arbitrated interconnection agreements. If the Commission declines to grant such motion, or if one is not filed, Joint Petitioners reserve the right to supplement this testimony.

Item No. 109, Issue No. S-2*: (A) How should any intervening FCC Order adopted in CC Docket 01-338 or WC Docket 04-313 be incorporated into the Agreement? (B) How should any intervening State Commission order relating to unbundling obligations, if any, be incorporated into the Agreement?*

Joint Petitioners and BellSouth agree that issue 109/S-2 is now moot.

Item No. 110, Issue No. S-3*: If FCC 04-179 is vacated or otherwise modified by a court of competent jurisdiction, how should such order or decision be incorporated into the Agreement?*

Joint Petitioners and BellSouth agree that issue 110/S-3 is now moot.

Item No. 111, Issue No. S-4: *At the end of the Interim Period, assuming that the Transition Period set forth in FCC 04-179 is neither vacated, modified, nor superseded, should the Agreement automatically incorporate the Transition Period set forth in the Interim Order? If not, what post Interim Period*[12] *transition plan should be incorporated into the Agreement?*

Joint Petitioners and BellSouth have agreed to file a joint motion requesting that the Commission refer this issue to the generic change-of-law docket for initial resolution and the reincorporation back into this docket for appropriate incorporation into the arbitrated interconnection agreements. If the Commission declines to grant such motion, or if one is not filed, Joint Petitioners reserve the right to supplement this testimony.

[12] INTERIM PERIOD – as set forth in ¶29 of the FCC 04-179, is defined as the period that ends on the earlier of (1) March 12, 2005 or (2) the effective date of the final unbundling rules adopted by the FCC pursuant to the Notice of Proposed Rulemaking described in the FCC 04-179.

Item No. 112, Issue No. S-5*: (A) What rates, terms and conditions relating to switching, enterprise market loops and dedicated transport were "frozen" by FCC 04-179? (B) How should these rates, terms and conditions be incorporated into the Agreement?*

Joint Petitioners and BellSouth agree that issue 112/S-5 is now moot.

Item No. 113, Issue No. S-6*: (A) Is BellSouth obligated to provide unbundled access to DSI loops, DS3 loops and dark fiber loops? (B) If so, under what rates, terms and conditions?*

Joint Petitioners and BellSouth have agreed to file a joint motion requesting that the Commission refer this issue to the generic change-of-law docket for initial resolution and the reincorporation back into this docket for appropriate incorporation into the arbitrated interconnection agreements. If the Commission declines to grant such motion, or if one is not filed, Joint Petitioners reserve the right to supplement this testimony.

Item No. 114, Issue No. S-7*: (A) Is BellSouth obligated to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport? (B) If so, under what rates, terms and conditions?*

Joint Petitioners and BellSouth have agreed to file a joint motion requesting that the Commission refer this issue to the generic change-of-law docket for initial resolution and the reincorporation back into this docket for appropriate incorporation into the arbitrated interconnection agreements. If the Commission declines to grant such motion, or if one is not filed, Joint Petitioners reserve the right to supplement this testimony.

JOINT PETITIONERS' EXHIBIT A

DISPUTED CONTRACT LANGUAGE BY ISSUE[1]

GENERAL TERMS AND CONDITIONS

Item No. 2, Issue No. G-2 [Section 1.7]: How should "End User" be defined?

1.7 [CLEC Version] **End User** means the **customer of a Party**.

[BellSouth Version] **End User, as used in this Interconnection Agreement,** means the **retail customer of a Telecommunications Service, excluding ISPs/ESPs, and does not include Telecommunications carriers such as CLECs, ICOs and IXCs**.

Customer, as used in this Interconnection Agreement, means the wholesale customer of a Telecommunications Service that may be an ISP/ESP, CLEC, ICO or IXC.

end user, as used in this Interconnection Agreement, means the End User or any other retail customer of a Telecommunications Service, including ISPs/ESPs, CLECs, ICOs and IXCs, that are provided the retail Telecommunications Service for the exclusive use of the personnel employed by ISPs/ESPs, CLECs, ICOs and IXCs, such as the administrative business lines used by the ISPs/ESPs, CLECs, ICOs and IXCs at their business locations, where such ISPs/ESPs, CLECs, ICOs and IXCs are treated as End Users.

Item No. 4, Issue No. G-4 [Section 10.4.1]: What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?

10.4.1 [CLEC Version] **With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by either Party, any End User of either Party, or by any other person or entity, for damages associated with any of the services provided pursuant to or in connection with this Agreement, including but not limited to the installation, provision,**

[1] Revised for filing 05/11/05

preemption, termination, maintenance, repair or restoration of service, and, in any event, subject to the provisions of the remainder of this Section, each Party's liability shall be limited to and shall not exceed in aggregate amount over the entire term hereof an amount equal to seven-and-one half percent (7.5%) of the aggregate fees, charges or other amounts paid or payable to such Party for any and all services provided or to be provided by such Party pursuant to this Agreement as of the Day on which the claim arose; provided that the foregoing provisions shall not be deemed or construed as (A) imposing or allowing for any liability of either Party for (x) indirect, special or consequential damages as otherwise excluded pursuant to Section 10.4.4 below or (y) any other amount or nature of damages to the extent resulting directly and proximately from the claiming Party's failure to act at all relevant times in a commercially reasonable manner in compliance with such Party's duties of mitigation with respect to all applicable damages or (B) limiting either Party's right to recover appropriate refund(s) of or rebate(s) or credit(s) for fees, charges or other amounts paid at Agreement rates for services not performed or provided or otherwise failing to comply (with applicable refund, rebate or credit amounts measured by the diminution in value of services reasonably resulting from such noncompliance) with the applicable terms and conditions of this Agreement. Notwithstanding the foregoing, claims or suits for damages by either Party, any End User of either Party, or by any other person or entity, to the extent resulting from the gross negligence or willful misconduct of the other Party, shall not be subject to the foregoing limitation of liability.

[BellSouth Version] Except for any indemnification obligations of the Parties hereunder, **and except in cases of the provisioning Party's gross negligence or willful misconduct,** each Party's liability to **the other for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort,** shall be limited to **a credit for the actual cost of the** services **or functions** not performed or **improperly performed.**

Item No. 5, Issue No. G-5 [Section 10.4.2]: To the extent that a Party does not or is unable to include specific limitation of liability terms in all of its tariffs and End User contracts (past, present and future), should it be obligated to indemnify the other Party for liabilities not limited?

10.4.2 [CLEC Version] **No Section.**

[BellSouth Version] **Limitations in Tariffs. A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users, customers and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to the End User, customer or third party for (i) any loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss and (ii) consequential damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a loss as a result thereof, such Party shall indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such loss.**

Item No. 6, Issue No. G-6 [Section 10.4.4]: Should the Agreement expressly state that liability for claims or suits for damages incurred by CLEC's (or BellSouth's) customers/End Users resulting directly and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance of obligations set forth in the Agreement are not indirect, incidental or consequential damages?

10.4.4 [CLEC Version] Nothing in this Section 10 shall limit a Party's obligation to indemnify or hold harmless the other Party set forth elsewhere in this Agreement. Except in cases of gross negligence or willful or intentional misconduct, under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages **provided that neither the foregoing nor any other provision of this Section 10 shall be deemed or construed as imposing any limitation on the liability of a Party for claims or suits for damages incurred by End Users of the other Party or by such other Party vis-à-vis its End Users to the extent such damages result directly and in a reasonably foreseeable manner from the first Party's performance of services hereunder**

and were not and are not directly and proximately caused by or the result of such Party's failure to act at all relevant times in a commercially reasonable manner in compliance with such Party's duties of mitigation with respect to such damage. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

[BellSouth Version] Nothing in this Section 10 shall limit a Party's obligation to indemnify or hold harmless the other Party set forth elsewhere in this Agreement. Except in cases of gross negligence or willful or intentional misconduct, under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

Item No. 7, Issue No. G-7 [Section 10.5]: What should the indemnification obligations of the parties be under this Agreement?

10.5 [CLEC Version] Indemnification for Certain Claims. The Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim **for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications**. **The Party receiving services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party providing services hereunder against any claim, loss or damage to the extent arising from (1) the providing Party's failure to abide by Applicable Law, or (2) injuries or damages arising out of or in connection with this Agreement to the extent caused by the providing Party's negligence, gross negligence or willful misconduct.**

[BellSouth Version] Indemnification for Certain Claims. The Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, **except to the extent caused by the providing Party's gross negligence or willful misconduct,** defended and held harmless by the Party receiving services hereunder against any claim**, loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims** for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications**, or (2)** any claim, loss or damage **claimed by the**

End User or customer of the Party receiving services arising from such company's use or reliance on the providing Party's services, actions, duties, or obligations arising out of this Agreement.

Item No. 9, Issue No. G-9 [Section 13.1]: Should a court of law be included in the venues available for initial dispute resolution for disputes relating to the interpretation or implementation of the Interconnection Agreement?

13.1 [CLEC Version] Except **as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, either Party may petition the FCC, the Commission or a court of law for a resolution of the dispute. Either Party may seek expedited resolution by the Commission, and may request that resolution occur in no event later than sixty (60) calendar days from the date of submission of such dispute. The other Party will not object to such expedited resolution of a dispute. If the FCC or Commission appoints an expert(s) or other facilitator(s) to assist in its decision making, each party shall pay half of the fees and expenses so incurred to the extent the FCC or the Commission requires the Parties to bear such fees and expenses.** Each Party reserves any rights it may have to seek judicial review of any ruling made by the FCC, the Commission or a court of law concerning this Agreement. **Until the dispute is finally resolved,** each Party shall continue to perform its obligations under this Agreement, **unless the issue as to how or whether there is an obligation to perform is the basis of the dispute, and shall continue to provide all services and payments as prior to the dispute** provided however, that neither Party shall be required to act in any unlawful fashion.

13.1 [BellSouth Version] Except **for procedures that outline the resolution of billing disputes which are set forth in Section 2 of Attachment 7 or as otherwise set forth in this Agreement, each Party agrees to notify the other Party in writing of a dispute concerning this Agreement. If the Parties are unable to resolve the issues relating to the dispute in the normal course of business then either Party shall file a complaint with the Commission to resolve such issues or, as explicitly otherwise provided for in this Agreement, may proceed with any other remedy pursuant to law or equity as provided for in this Section 13.**

13.2 **Except as otherwise stated in this Agreement, or for such matters which lie outside the jurisdiction or expertise of the Commission or FCC, if any dispute arises as to the enforcement of terms and conditions of this Agreement, and/or as to the interpretation of any provision of this Agreement, the aggrieved Party, to the extent seeking resolution of such**

dispute, must seek such resolution before the Commission or the FCC in accordance with the Act. Each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement. Either Party may seek expedited resolution by the Commission. **During the Commission proceeding** each Party shall continue to perform its obligations under this Agreement; provided, however, that neither Party shall be required to act in an unlawful fashion**.**

13.3 **Except to the extent the Commission is authorized to grant temporary equitable relief with respect to a dispute arising as to the enforcement of terms and conditions of this Agreement, and/or as to the interpretation of any provision of this Agreement, this Section 13 shall not prevent either Party from seeking any temporary equitable relief, including a temporary restraining order, in a court of competent jurisdiction.**

13.4 **In addition to Sections 13.1 and 13.2 above, each Party shall have the right to seek legal and equitable remedies on any and all legal and equitable theories in any court of competent jurisdiction for any and all claims, causes of action, or other proceedings not arising: (i) as to the enforcement of any provision of this Agreement, or (ii) as to the enforcement or interpretation under applicable federal or state telecommunications law. Moreover, if the Commission would not have authority to grant an award of damages after issuing a ruling finding fault or liability in connection with a dispute under this Agreement, either Party may pursue such award in any court of competent jurisdiction after such Commission finding.**

Item No. 12, Issue No. G-12 [Section 32.2]: Should the Agreement explicitly state that all existing state and federal laws, rules, regulations, and decisions apply unless otherwise specifically agreed to by the Parties?

32.2 [CLEC Version] **Nothing in this Agreement shall be construed to limit a Party's rights or exempt a Party from obligations under Applicable Law, except in such cases where the Parties have explicitly agreed to an exception to a requirement of Applicable Law or to abide by provisions which conflict with and thereby displace corresponding requirements of Applicable Law. Silence shall not be construed to be such an exemption to or displacement of any aspect, no matter how discrete, of Applicable Law.**

[BellSouth Version] [BellSouth Version] **This Agreement is intended to memorialize the Parties' mutual agreement with respect to their obligations under the Act and applicable FCC and Commission rules and orders. To the extent that either Party asserts that an obligation, right or other**

requirement, not expressly memorialized herein, is applicable under this Agreement by virtue of a reference to an FCC or Commission rule or order or, with respect to substantive Telecommunications law only, Applicable Law, and such obligation, right or other requirement is disputed by the other Party, the Party asserting that such obligation, right or other requirement is applicable shall petition the Commission for resolution of the dispute and the Parties agree that any finding by the Commission that such obligation, right or other requirement exists shall be applied prospectively by the Parties upon amendment of the Agreement to include such obligation, right or other requirement and any necessary rates, terms and conditions, and the Party that failed to perform such obligation, right or other requirement shall be held harmless from any liability for such failure until the obligation, right or other requirement is expressly included in this Agreement by amendment hereto.

ATTACHMENT 2

NETWORK ELEMENTS AND OTHER SERVICES

Item No. 23, Issue No. 2-5 [Section 1.11.1]: What rates, terms, and conditions should govern the CLECs' transition of existing network elements that BellSouth is no longer obligated to provide as UNEs to other services?

[CLEC Version] **In the event section 251 UNEs or Combinations are no longer offered pursuant to, or are not in compliance with, the terms set forth in the Agreement, including any transition plan set forth herein or established by the FCC or Authority, BellSouth may provide notice ("transition notice") to <<customer_short_name>> identifying specific service arrangements (by circuit identification number) that it no longer is obligated to provide as section 251 UNEs and that it insists be transitioned to other service arrangements. <<customer_short_name>> will acknowledge receipt of such notice and will have 30 days from such receipt to verify the list, notify BellSouth of initial disputes or concerns regarding such list, or select alternative service arrangements (or disconnection). <<customer_short_name>> and BellSouth will then confer to determine the appropriate orders to be submitted (i.e., spreadsheets, LSRs or ASRs). Such orders shall be submitted within 10 days of agreement upon the appropriate method (i.e., spreadsheets, LSRs or ASRs) and such agreement shall not be unreasonably withheld or delayed. There will be no service order, labor, disconnection, project management or other nonrecurring charges associated with the transition of section 251 UNEs to other service arrangements. The Parties will absorb their own costs associated with effectuating the process set forth in this section. In all cases, until the transition of any section 251 UNE to another service arrangement is physically completed (which, in the case of transition to another service arrangement provided by an entity other than BellSouth or one of its affiliates, shall be the time of disconnection), the applicable recurring rates set forth in the parties' interconnection agreement that immediately preceded the current Agreement or that were otherwise in effect at the time of the transition notice shall apply.**

[BellSouth Version] **In the event that <<customer_short_name>> has not entered into a separate agreement for the provision of Local Switching or services that include Local Switching, <<customer_short_name>> will submit orders to either disconnect Switching Eliminated Elements or convert such Switching Eliminated Elements to Resale within thirty (30) calendar days of the last day of the Transition Period. If <<customer_short_name>> submits orders to transition such Switching Eliminated Elements to Resale within thirty (30) calendar days of the last day of the Transition Period, applicable recurring and nonrecurring charges shall apply as set forth in the**

appropriate BellSouth tariff, subject to the appropriate discounts described in Attachment 1 of this Agreement. If <<customer_short_name>> fails to submit orders within thirty (30) calendar days of the last day of the Transition Period, BellSouth shall transition such Switching Eliminated Elements to Resale, and <<customer_short_name>> shall pay the applicable nonrecurring and recurring charges as set forth in the appropriate BellSouth tariff, subject to the appropriate discounts described in Attachment 1 of this Agreement. In such case, <<customer_short_name>> shall reimburse BellSouth for labor incurred in identifying the lines that must be converted and processing such conversions. If no equivalent Resale service exists, then BellSouth may disconnect such Switching Eliminated Elements if <<customer_short_name>> does not submit such orders within thirty (30) calendar days of the last day of the Transition Period. In all cases, until Switching Eliminated Elements have been converted to Comparable Services or disconnected, the applicable recurring and nonrecurring rates for Switching Eliminated Elements during the Transition Period shall apply as set forth in this Agreement. Applicable nonrecurring disconnect charges may apply for disconnection of service or conversion to Comparable Services.

1.11.2 **Other Eliminated Elements. Upon the end of the Transition Period, <<customer_short_name>> must transition the Eliminated Elements other than Switching Eliminated Elements ("Other Eliminated Elements") to Comparable Services. Unless the Parties agree otherwise, Other Eliminated Elements shall be handled in accordance with Sections 1.11.2.1 and 1.11.2.2 below.**

1.11.2.1 **<<customer_short_name>> will identify and submit orders to either disconnect Other Eliminated Elements or transition them to Comparable Services within thirty (30) calendar days of the last day of the Transition Period. Rates, terms and conditions for Comparable Services shall apply per the applicable tariff for such Comparable Services as of the date the order is completed. Where <<customer_short_name>> requests to transition a minimum of fifteen (15) circuits per state, <<customer_short_name>> may submit orders via a spreadsheet process and such orders will be project managed. In all other cases, <<customer_short_name>> must submit such orders pursuant to the local service request/access service request (LSR/ASR) process, dependent on the Comparable Service elected. For such transitions, the non-recurring and recurring charges shall be those set forth in BellSouth's FCC No. 1 tariff, or as otherwise agreed in a separately negotiated agreement. Until such time as the Other Eliminated Elements are transitioned to such Comparable Services, such Other Eliminated Elements will be provided pursuant to the rates, terms and conditions applicable to the subject Other Eliminated Elements during the Transition Period as set forth in this Agreement.**

1.11.2.2 **If <<customer_short_name>> fails to identify and submit orders for any Other Eliminated Elements within thirty (30) calendar days of the last day of the Transition Period, BellSouth may transition such Other Eliminated Elements to Comparable Services. The rates, terms and conditions for such Comparable Services shall apply as of the date following the end of the Transition Period. If no Comparable Services exist, then BellSouth may disconnect such Other Eliminated Elements if <<customer_short_name>> does not submit such orders within thirty (30) calendar days of the last day of the Transition Period. In such case <<customer_short_name>> shall reimburse BellSouth for labor incurred in identifying such Other Eliminated Elements and processing such orders and <<customer_short_name>> shall pay the applicable disconnect charges set forth in this Agreement. Until such time as the Other Eliminated Elements are disconnected pursuant to this Agreement, such Other Eliminated Elements will be provided pursuant to the rates, terms and conditions applicable to the subject Other Eliminated Elements during the Transition Period as set forth in this Agreement.**

1.11.3 **To the extent the FCC issues an effective Intervening Order that alters the rates, terms and conditions for any Network Element or Other Service, including but not limited to Local Switching, Enterprise Market Loops and High Capacity Transport, the Parties agree that such Intervening Order shall supersede those rates, terms and conditions set forth in this Agreement for the affected Network Element(s) or Other Service(s).**

1.11.4 **Notwithstanding anything to the contrary in this Agreement, in the event that the Interim Rules are vacated by a court of competent jurisdiction, <<customer_short_name>> shall immediately transition Local Switching, Enterprise Market Loops and High Capacity Transport pursuant to Section 1.11 through 1.11.2.2 above, applied from the effective date of such vacatur, without regard to the Interim Period or Transition Period.**

1.11.5 **Notwithstanding anything to the contrary in this Agreement, upon the Effective Date of the Final FCC Unbundling Rules, to the extent any rates, terms or requirements set forth in such Final FCC Unbundling Rules are in conflict with, in addition to or otherwise different from the rates, terms and requirements set forth in this Agreement, the Final FCC Unbundling Rules rates, terms and requirements shall supercede the rates, terms and requirements set forth in this Agreement without further modification of this Agreement by the Parties.**

1.11.6 **In the event that any Network Element, other than those already addressed above, is no longer required to be offered by BellSouth pursuant to Section 251 of the Act, <<customer_short_name>> shall immediately transition such elements pursuant to Section 1.11 through 1.11.2.2 above, applied from the effective date of the order eliminating such obligation.**

Item No. 26, Issue No. 2-8 [Section 1.13]: Should BellSouth be required to commingle UNEs or Combinations with any service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act?

1.7 [CLEC Version] **BellSouth shall permit <<customer_short_name>> to commingle a UNE or Combination of UNEs with any wholesale service, consistent with 47 C.F.R. 51.309(e). BellSouth shall perform the functions necessary to commingle a UNE with any wholesale service, consistent with 47 C.F.R. 51.309(f).**

[BellSouth Version] **Notwithstanding any other provision of this Agreement, BellSouth will not commingle UNEs or Combinations of UNEs with any service, Network Element or other offering that it is obligated to make available only pursuant to Section 271 of the Act. Nothing in this Section shall prevent <<customer_short_name>> from commingling Network Elements with tariffed special access loops and transport services.**

Item No. 36, Issue No. 2-18 [Section 2.12.1]: (A) How should Line Conditioning be defined in the Agreement? (B) What should BellSouth's obligations be with respect to line conditioning?

2.12.1 [CLEC Version] **BellSouth shall perform line conditioning in accordance with FCC 47 C.F.R. 51.319 (a)(1)(iii). Line Conditioning is as defined in FCC 47 C.F.R. 51.319 (a)(1)(iii)(A).** Insofar as it is technically feasible, BellSouth shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.

[BellSouth Version] **Line Conditioning is defined as a RNM that BellSouth regularly undertakes to provide xDSL services to its own customers. This may include the removal of any device, from a copper loop or copper sub-loop that may diminish the capability of the loop or sub-loop to deliver high-speed switched wireline telecommunications capability, including xDSL service. Such devices include, but are not limited to; load coils, low pass filters, and range extenders.** Insofar as it is technically feasible, BellSouth shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.

Item No. 37, Issue No. 2-19 [Section 2.12.2]: Should the

Agreement contain specific provisions limiting the availability of Line Conditioning to copper loops of 18,000 feet or less?

2.12.2 [CLEC Version] **No Section.**

[BellSouth Version] **BellSouth will remove load coils only on copper loops and sub loops that are less than 18,000 feet in length. BellSouth will remove load coils on copper loops and sub loops that are greater than 18,000 feet in length upon <<customer_short_name>>'s request at rates pursuant to BellSouth's Special Construction Process contained in BellSouth's FCC No. 2 as mutually agreed to by the Parties.**

Item No. 38, Issue No. 2-20 [Sections 2.12.3, 2.12.4]: Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?

2.12.3 [CLEC Version] Any copper loop being ordered by <<customer_short_name>> which has over 6,000 feet of combined bridged tap will be modified, upon request from <<customer_short_name>>, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to <<customer_short_name>>. Line conditioning orders that require the removal of **other** bridged tap will be performed at the rates set forth in Exhibit A of this Attachment.

[BellSouth Version] Any copper loop being ordered by <<customer_short_name>> which has over 6,000 feet of combined bridged tap will be modified, upon request from <<customer_short_name>>, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to <<customer_short_name>>. Line conditioning orders that require the removal of bridged tap **that serves no network design purpose on a copper loop that will result in a combined level of bridged tap between 2,500 and 6,000 feet** will be performed at the rates set forth in Exhibit A of this Attachment.

2.12.4 [CLEC Version] **No Section**.

[BellSouth Version] **<<customer_short_name>> may request removal of any unnecessary and non-excessive bridged tap (bridged tap between 0 and 2,500 feet which serves no network design purpose), at rates pursuant to BellSouth's Special Construction Process contained in BellSouth's FCC No. 2 as mutually agreed to by the Parties.**

Item No. 51, Issue No. 2-33 [Sections 5.2.6, 5.2.6.1]: (A) ***This issue has been resolved.***

(B) Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include?

(C) Who should conduct the audit and how should the audit be performed?

5.2.6 [CLEC Version] To invoke its limited right to audit, BellSouth will send a Notice of Audit to <<customer_short_name>>, identifying **the particular circuits for which BellSouth alleges non-compliance and** the cause upon which BellSouth rests its allegations. **The Notice of Audit shall also include all supporting documentation upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of noncompliance.** Such Notice of Audit will be delivered to <<customer_short_name>> **with all supporting documentation** no less than thirty (30) calendar days prior to the date upon which BellSouth seeks to commence the audit.

[BellSouth Version] To invoke its limited right to audit, BellSouth will send a Notice of Audit to <<customer_short_name>> identifying the cause upon which BellSouth rests its allegations. Such Notice of Audit will be delivered to <<customer_short_name>> no less than thirty (30) calendar days prior to the date upon which BellSouth seeks to commence the audit.

5.2.6.1 [CLEC Version] The audit shall be conducted by a third party independent auditor **mutually agreed-upon by the Parties** and retained and paid for by BellSouth. The audit shall commence at a mutually agreeable location (or locations).

[BellSouth Version] The audit shall be conducted by a third party independent auditor retained and paid for by BellSouth. The audit shall commence at a mutually agreeable location (or locations).

ATTACHMENT 3

INTERCONNECTION

Item No. 65, Issue No. 3-6 [Section 10.11. 1 (KMC/XSP), 10.8.1 (NSC/NVX)]: Should BellSouth be allowed to charge the CLEC a Transit Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?

10.10.1 [CLEC Version] Each Party shall provide tandem switching and transport services for the other Party's Transit Traffic. Rates for Local Transit Traffic and ISP-Bound Transit Traffic shall be the applicable Call Transport and Termination charges (i.e., common transport and tandem switching charge; end office switching charge is not applicable) as set forth in Exhibit A to this Attachment. Rates for Switched Access Transit Traffic shall be the applicable charges as set forth in the applicable Party's Commission approved Interstate or Intrastate Switched Access tariffs as filed and effective with the FCC or Commission, or reasonable and non-discriminatory web-posted listing if the FCC or Commission does not require filing of a tariff. Billing associated with all Transit Traffic shall be pursuant to MECAB guidelines.

[BellSouth's Version] Each Party shall provide tandem switching and transport services for the other Party's Transit Traffic. Rates for Local Transit Traffic and ISP-Bound Transit Traffic shall be the applicable Call Transport and Termination charges (i.e., common transport and tandem switching charges and **tandem intermediary charge**; end office switching charge is not applicable) as set forth in Exhibit A to this Attachment. Rates for Switched Access Transit Traffic shall be the applicable charges as set forth in the applicable Party's Commission approved Interstate or Intrastate Switched Access tariffs as filed and effective with the FCC or Commission, or reasonable and non-discriminatory web-posted listing if the FCC or Commission does not require filing of a tariff. Billing associated with all Transit Traffic shall be pursuant to MECAB guidelines.

ATTACHMENT 6

ORDERING

Item No. 86, Issue No. 6-3 [Sections 2.5.6.2, 2.5.6.3]: (A) ***This issue has been resolved****. (B) How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?*

2.5.5.2 [CLEC Version] Notice of Noncompliance. If, after receipt of a requested LOA, the requesting Party determines that the other Party has accessed CSR information without having obtained the proper end user authorization, or, if no LOA is provided by the seventh (7th) business day after such request has been made, the requesting Party will send written notice to the other Party specifying the alleged noncompliance. **The Party receiving the notice agrees to acknowledge receipt of the notice as soon as practicable. If the Party receiving the notice does not dispute the other Party's assertion of non-compliance, the receiving Party agrees to provide the other Party with notice that appropriate corrective measures have been taken or will be taken as soon as practicable.**

[BellSouth Version] Notice of Noncompliance. If, after receipt of a requested LOA, the requesting Party determines that the other Party has accessed CSR information without having obtained the proper end user authorization, or, if no LOA is provided by the seventh (7th) business day after such request has been made, the requesting Party will send written notice by email to the other Party specifying the alleged noncompliance.

2.5.5.3 [CLEC Version] Disputes over Alleged Noncompliance. **If one Party disputes the other Party's assertion of non-compliance, that Party shall notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within a reasonable time or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting the non-compliance, the requesting** Party shall proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions. In such instance, the Parties cooperatively shall seek expedited resolution of the dispute. All such information obtained through the process set forth in this Section 2.5.5 shall be deemed Information covered by the Proprietary and Confidential Information Section in the General Terms and Conditions of this Agreement.

[BellSouth Version] Disputes over Alleged Noncompliance. In it's **written notice to the other Party** the alleging Party will state **that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if such**

use is not corrected or ceased by the fifth (5th) calendar day following the date of the notice. In addition, the alleging Party may, at the same time, provide written notice by email to the person designated by the other Party to receive notices of noncompliance that the alleging Party may terminate the provision of access to ordering systems to the other Party and may discontinue the provisioning of existing services if such use is not corrected or ceased by the tenth (10th) calendar day following the date of the initial notice. If the other Party disagrees with the alleging Party's allegations of unauthorized use, the alleging Party shall proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions. All such information obtained through the process set forth in this Section 2.5.5 shall be deemed Information covered by the Proprietary and Confidential Information Section in the General Terms and Conditions of this Agreement.

Item No. 88, Issue No. 6-5 [Section 2.6.5]: What rate should apply for Service Date Advancement (a/k/a service expedites)?

2.6.5 [PARTIES DISAGREE ON THE RATE, NOT THE LANGUAGE] Service Date Advancement Charges (a.k.a. Expedites). For Service Date Advancement requests by <<customer_short_name>>, Service Date Advancement charges will apply for intervals less than the standard interval as outlined in Section 8 of the LOH, located at http://interconnection.bellsouth.com/guides/html/leo.html. The charges shall be as set-forth in Exhibit A of Attachment 2 of this Agreement and will apply only where Service Date Advancement has been specifically requested by the requesting Party, and the element or service provided by the other Party meets all technical specifications and is provisioned to meet those technical specifications. If <<customer_short_name>> accepts service on the plant test date (PTD) normal recurring charges will apply from that date but Service Date Advancement charges will only apply if <<customer_short_name>> previously requested the order to be expedited and the expedited DD is the same as the original PTD.

ATTACHMENT 7

BILLING

Item No. 97, Issue No. 7-3 [Section 1.4]: When should payment of charges for service be due?

1.4 [CLEC Version] Payment Due. Payment **of charges** for services rendered will be due **thirty (30) calendar days from receipt or website posting of a complete and fully readable bill or within thirty (30) calendar days from receipt or website posting of a corrected or retransmitted bill in those cases where correction or retransmission is necessary for processing** and is payable in immediately available funds. Payment is considered to have been made when received by the billing Party.

[BellSouth Version] Payment Due. Payment for services will be due **on or before the next bill date (Payment Due Date)** and is payable in immediately available funds. Payment is considered to have been made when received by the billing Party.

Item No. 100, Issue No. 7-6 [Section 1.7.2]: Should CLEC be required to calculate and pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?

1.7.2 [CLEC Version] **Each Party** reserves the right to suspend or terminate service for nonpayment. If payment of amounts not subject to a billing dispute, as described in Section 2, is not received by the **Due Date, the billing Party may** provide written notice **to the other Party** that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment of such amounts, **as indicated on the notice in dollars and cents**, is not received by the fifteenth (15th) calendar day following the date of the notice. In addition, **the billing Party** may, at the same time, provide written notice that **the billing Party** may discontinue the provision of existing services to **the other Party** if payment of such amounts, **as indicated on the notice (in dollars and cents),** is not received by the thirtieth (30th) calendar day following the date of the Initial Notice.

[BellSouth Version] **BellSouth** reserves the right to suspend or terminate service for nonpayment. If payment of amounts not subject to a billing dispute, as described in Section 2, is not received by the **bill date in the month after the original bill date, BellSouth** will provide written notice to **<<customer_short_name>>** that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment of such amounts, **and all other amounts not in dispute that become past due subsequent to the issuance of the written notice ("Additional Amounts Owed"),** is not received by the (15th) calendar day following the date of the notice. In addition, **BellSouth** may, at the same time, provide written notice that **BellSouth** may discontinue the provision of existing services to **<<customer_short_name>>** if payment of such amounts**, and all other Additional Amounts Owed that become past due subsequent to the issuance of the written notice**, is not received by the thirtieth (30th) calendar day following the date of the initial notice. **Upon request, BellSouth will provide information to <<customer_short_name>> of the Additional Amounts Owed that must be paid prior to the time periods set forth in the written notice to avoid suspension of access to ordering systems or discontinuance of the provision of existing services as set forth in the initial written notice.**

Item No. 101, Issue No. 7-7 [Section 1.8.3]: How many months of billing should be used to determine the maximum amount of the deposit?

1.8.3 [CLEC Version] The amount of the security shall not exceed two (2) month's estimated billing for new CLECs or **one and one-half month's** actual billing **under this Agreement** for existing CLECs **(based on average monthly billings for the most recent six (6) month period)**. Interest shall accrue per the appropriate BellSouth tariff on cash deposits.

[BellSouth Version] The amount of the security shall not exceed two (2) month's estimated billing for new CLECs or actual billing for existing CLECs. Interest shall accrue per the appropriate BellSouth tariff on cash deposits.

Item No. 102, Issue No. 7-8 [Section 1.8.3.1]: Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to CLEC?

1.8.3.1 [CLEC Version] **The amount of security due from an existing CLEC shall be reduced by amounts due <<customer_short_name>> by BellSouth aged over thirty (30) calendar days. BellSouth may request additional security in an amount equal to such reduction once BellSouth demonstrates a good payment history, as defined in Section 1.8.5.1, and subject to the standard set forth in Section 1.8.5.**

[BellSouth Version] The amount of the security due from **<<customer_short_name>>** shall be reduced by **the undisputed** amounts due **to** <<customer_short_name>> by BellSouth **pursuant to Attachment 3 of this Agreement that have not been paid by the Due Date at the time of the request by BellSouth to <<customer_short_name>> for a deposit. Within ten (10) days of BellSouth's payment of such undisputed past due amounts to <<customer_short_name>>, <<customer_short_name>> shall provide the additional security necessary to establish the full amount of the deposit that BellSouth originally requested.**

Item No. 103, Issue No. 7-9 [Section 1.8.6]: Should BellSouth be entitled to terminate service to CLEC pursuant to the process for termination due to non-payment if CLEC refuses to remit any deposit required by BellSouth within 30 calendar days?

1.8.6 [CLEC Version] In the event <<customer_short_name>> fails to remit to BellSouth any deposit requested pursuant to this Section **and either agreed to by <<customer_short_name>> or as ordered by the Commission** within thirty (30) calendar days **of such agreement or order**, service to <<customer_short_name>> may be terminated in accordance with the terms of Section 1.7 and subtending sections of this Attachment, and any security deposits will be applied to <<customer_short_name>>'s account(s).

[BellSouth Version] **Subject to Section 1.8.7 following,** in the event <<customer_short_name>> fails to remit to BellSouth any deposit requested pursuant to this Section within thirty (30) calendar days **of <<customer_short_name>>'s receipt of such request,** service to <<customer_short_name>> may be terminated in accordance with the terms of Section 1.7 and subtending sections of this Attachment, and any security deposits will be applied to <<customer_short_name>>'s account(s).

Item No. 104, Issue No. 7-10 [Section 1.8.7]: What recourse

should be available to either Party when the Parties are unable to agree on the need for or amount of a reasonable deposit?

1.8.7 [CLEC Version] The Parties will work together to determine the need for or amount of a reasonable deposit. **If the Parties are unable to agree, either Party** may file a petition for resolution of the dispute and both parties shall cooperatively seek expedited resolution of such dispute.

[BellSouth Version]. The Parties will work together to determine the need for or amount of a reasonable deposit. **If <<customer_short_name>> does not agree with the amount or need for a deposit requested by BellSouth, <<customer_short_name>>** may file a petition with the Commissions for resolution of the dispute and both Parties shall cooperatively seek expedited resolution of such dispute**. BellSouth shall not terminate service during the pendency of such a proceeding provided that <<customer_short_name>> posts a payment bond for 50% of the requested deposit during the pendency of the proceeding.**

SUPPLEMENTAL ISSUES
(ATTACHMENT 2)

Item No. 108, Issue No. S-1: How should the final FCC unbundling rules be incorporated into the Agreement?

Language to be provided by the Parties.

Item No. 109, Issue No. S-2: (A) Should any intervening FCC Order adopted in CC Docket 01-338 or WC Docket 04-313 be incorporated into the Agreement? If so, how?(B) Should any intervening State Commission Order relating to the unbundling obligations, if any, be incorporated into the Agreement? If so, how?

Language to be provided by the Parties.

Item No. 110, Issue No. S-3: If FCC 04-179 is vacated or otherwise modified by a court of competent jurisdiction, how should such order or decision be incorporated into the Agreement?

Language to be provided by the Parties.

Item No. 111, Issue No. S-4 At the end of the Interim Period, assuming that the Transition Period set forth in FCC 04-179 is neither vacated, modified, nor superseded, should the Agreement automatically incorporate the Transition Period set forth in the Interim Order? If not, what post Interim Period transition plan should be incorporated into the Agreement?

Language to be provided by the Parties.

Item No. 112, Issue No. S-5: (A) What rates, terms and conditions relating to switching, enterprise market loops and dedicated transport were "frozen" by FCC 04-179? (B) How should these rates, terms and conditions be incorporated into the Agreement?

Language to be provided by the Parties.

Item No. 113, Issue No. S-6: (A) Is BellSouth obligated to provide unbundled access to DSI loops, DS3 loops and dark fiber loops? (B) If so, under what rates, terms and conditions?

Language to be provided by the Parties.

Item No. 114, Issue No. S-7: (A) Is BellSouth obligated to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport? (B) If so, under what rates, terms and conditions?

Language to be provided by the Parties.

EXHIBIT B

INTERCONNECTION AGREEMENT

BETWEEN

ALLTEL SOUTH CAROLINA, INC.

&

NEWSOUTH COMMUNICATIONS CORPORATION

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7.0 Liability and Indemnification

7.1 Limitation of Liabilities

With respect to any claim or suit for damages arising out of mistakes, omissions, defects in transmission, interruptions, failures, delays or errors occurring in the course of furnishing any service hereunder, the liability of the Party furnishing the affected service, if any, shall be the greater of two hundred and fifty thousand dollars ($250,000) or the aggregate annual charges imposed to the other Party for the period of that particular service during which such mistakes, omissions, defects in transmission, interruptions, failures, delays or errors occurs and continues; provided, however, that any such mistakes, omissions, defects in transmission, interruptions, failures, delays, or errors which are caused by the gross negligence or willful, wrongful act or omission of the complaining Party or which arise from the use of the complaining Party's facilities or equipment shall not result in the imposition of any liability whatsoever upon the other Party furnishing service.

7.2 No Consequential Damages

EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION WILL LIMIT EITHER PARTY'S LIABILITY TO THE OTHER PARTY FOR (i) WILLFUL OR INTENTIONAL MISCONDUCT (INCLUDING GROSS NEGLIGENCE) OR (ii) BODILY INJURY, DEATH, OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY.

7.3 Obligation to Indemnify

7.3.1 Each Party shall be indemnified and held harmless by the other Party against claims, losses, suits, demands, damages, costs, expenses, including reasonable attorneys' fees ("Claims"), asserted, suffered, or made by third parties arising from (i) any act or omission of the indemnifying Party in connection with its performance or non-performance under his Agreement; and (ii) provision of the indemnifying Party's services or equipment, including but not limited to claims arising from the provision of the indemnifying Party's services to its end users (e.g., claims for interruption of service, quality of service or billing disputes) unless such act or omission was caused by the negligence or willful misconduct of the indemnified Party. Each Party shall also be indemnified and held harmless by the other Party against claims and damages of persons for services furnished by the indemnifying Party or by any of its subcontractors, under worker's compensation laws or similar statutes.

7.3.2 Each Party, as an Indemnifying Party agrees to release, defend, indemnify, and hold harmless the other Party from any claims, demands or suits that asserts any infringement or invasion of privacy or confidentiality of any person or persons caused or claimed to be caused, directly or indirectly, by the Indemnifying Party's employees and equipment associated with the provision of any service herein. This provision includes but is not limited to suits arising from unauthorized disclosure of the end user's name, address or telephone number.

7.3.3 ALLTEL makes no warranties, express or implied, concerning NewSouth's (or any third party's) rights with respect to intellectual property (including without limitation, patent, copyright and trade secret rights) or contract rights associated with NewSouth's interconnection with ALLTEL's network use or receipt of ALLTEL services.

7.3.4 When the lines or services of other companies and carriers are used in establishing connections to and/or from points not reached by a Party's lines, neither Party shall be liable for any act or omission of the other companies or carriers.

7.4 Obligation to Defend; Notice; Cooperation

Whenever a claim arises for indemnification under this Section (the "Claim"), the relevant Indemnitee, as appropriate, will promptly notify the Indemnifying Party and request the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such Claim. The Indemnifying Party will have the right to defend against such Claim in which event the Indemnifying Party will give written notice to the Indemnitee of acceptance of the defense of such Claim and the identity of counsel selected by the Indemnifying Party. Except as set forth below, such notice to the relevant Indemnitee will give the Indemnifying Party full authority to defend, adjust, compromise, or settle such Claim with respect to which such notice has been given, except to the extent that any compromise or settlement might prejudice the Intellectual Property Rights of the relevant Indemnities. The Indemnifying Party will consult with the relevant Indemnitee prior to any compromise or settlement that would affect the Intellectual Property Rights or other rights of any Indemnitee, and the relevant Indemnitee will have the right to refuse such compromise or settlement and, at such Indemnitee's sole cost, to take over such defense of such Claim. Provided, however, that in such event the Indemnifying Party will not be responsible for, nor will it be obligated to indemnify the relevant Indemnitee against any damages, costs, expenses, or liabilities, including without limitation, attorneys' fees, in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the relevant Indemnitee will be entitled to participate with the Indemnifying Party in such defense if the Claim requests equitable relief or other relief that could affect the rights of the Indemnitee and also will be entitled to employ separate counsel for such defense at such Indemnitee's expense. In the event the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the relevant Indemnitee will have the right to employ counsel for such defense at the expense of the Indemnifying Party, and the Indemnifying Party shall be liable for all costs associated with Indemnitee's defense of such Claim including court costs, and any settlement or damages awarded the third party. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such Claim.

REDACTED

EXHIBIT C

By and Between

BellSouth Telecommunications, Inc.

And

ITC^DeltaCom Communications, Inc.
d/b/a ITC^DeltaCom d/b/a Grapevine

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General Terms and Conditions

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AGREEMENT

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom d/b/a Grapevine, hereinafter referred to as ("ITC^DeltaCom") an Alabama corporation, and shall be deemed effective on the Effective Date, as defined herein. This agreement may refer to either BellSouth or ITC^DeltaCom or both as a "Party" or "Parties. "

WITNESSETH

WHEREAS, BellSouth is an incumbent local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, ITC^DeltaCom is a competitive local exchange telecommunications company ("CLEC") authorized to provide telecommunications services in the state of Georgia; and

WHEREAS, the Parties wish to interconnect their facilities, purchase unbundled elements and/or resale services, and exchange traffic pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 ("the Act").

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and ITC^DeltaCom agree as follows:

Definitions

Access Service Request or "ASR" means an industry standard form used by the Parties to add, establish, change or disconnect trunks for the purposes of interconnection.

Act means the Communications Act of 1934, 47 U.S.C. 151 et seq., as amended, including the Telecommunications Act of 1996, and as interpreted from time to time in the duly authorized rules and regulations of the FCC or the Commission/Board.

Advanced Intelligent Network or "AIN" is Telecommunications network architecture in which call processing, call routing and network management are provided by means of centralized databases.

Affiliate is an entity that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another entity. For purposes of this paragraph, the term "own" or "control" means to own an equity interest (or equivalent thereof) of more than 10 percent.

Attachment 7

Billing and Billing Accuracy Certification

CLEC in the state and does not include any parents or separate affiliates. Notice, for purposes of this Deposit Policy, is defined as written notification to the Chief Financial Officer, General Counsel, and Vice President of Line Cost Accounting of ITC^DeltaCom.

1.11.1 New Customers and existing Customers may satisfy the requirements of this section with a D&B credit rating of 5A1 or through the presentation of a payment guarantee executed by another existing customer of BellSouth and with terms acceptable to BellSouth where said guarantor has a credit rating equal to 5A1. Upon request, Customer shall complete the BellSouth credit profile and provide information, reasonably necessary, to BellSouth regarding creditworthiness.

1.11.2 With the exception of new Customers with a D&B credit rating equal to 5A1, BellSouth may secure the accounts of all new Customers as set forth in subsection 1.11.4. In addition, new Customers will be treated as such until twelve months from their first bill/invoice date, and will be treated as existing Customers thereafter.

1.11.3 If a Customer has filed for bankruptcy protection within twelve (12) months of the effective date of this Agreement, BellSouth may treat Customer, for purposes of establishing a security on its accounts as a new customer as set forth in subsection 1.11.7.

1.11.4 The security required by BellSouth shall take the form of cash, an Irrevocable Letter of Credit (BellSouth Form), Surety Bond (BellSouth Form), or, in BellSouth's sole discretion, some other form of security proposed by Customer. The amount of the security shall not exceed two (2) months' estimated billing for services billed in advance and two months' billing for services billed in arrears and if provided in cash, interest on said cash security shall accrue and be paid in accordance with the terms in the Commission approved General Subscriber BellSouth tariff for the appropriate state.

1.11.5 Any such security shall in no way release Customer from the obligation to make complete and timely payments of its bill.

1.11.6 No security deposit shall be required of an existing Customer who has a good payment history and meets two (2) liquidity benchmarks sets forth below in Sections 1.11.6.2 and 1.11.6.3. BellSouth may secure, pursuant to Section 1.11.9, the accounts of existing Customers where an existing Customer does not have a good payment history as defined in Section 1.11.1.6.1. If an existing Customer has a good payment history but fails to meet the two (2) liquidity benchmarks defined in Sections 1.11.6.2 and 1.11.6.3, BellSouth may secure the Customer's accounts, pursuant to Section 1.11.9.

BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION
DOCKET NO. 2005-57-C

In the Matter of	)	
	)	
Joint Petition for Arbitration of	)	
NewSouth Communications, Corp.,	)	
NuVox Communications, Inc.,	)	
KMC Telecom V, Inc.,	)	CERTIFICATE OF SERVICE
KMC Telecom III LLC, and	)	
Xspedius [Affiliates] of an	)	
Interconnection Agreement with	)	
BellSouth Telecommunications, Inc.	)	
Pursuant to Section 252(b) of the	)	
Communications Act of 1934,	)	
as Amended	)	

This is to certify that I have caused to be served this day, one (1) copy of the **Direct Testimony of Joint Petitioners** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

Patrick Turner, Esquire
BellSouth Telecommunications, Inc.
P.O. Box 752
Columbia SC 29202

Office of Regulatory Staff
Legal Department
PO Box 11263
Columbia SC 29211

Carol Roof

May 11, 2005
Columbia, South Carolina
G:\APPS\OFFICE\WPWIN\WPDOCS\KMC-NewSouth-Nuvox-Xspedius\cert.service.wpd